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SOCIAL SECURITY BENEFITS FOR ADOPTED CHILDREN AND STEPCHILDREN

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

APRIL 6, 1989

Serial 101-17

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SOCIAL SECURITY BENEFITS FOR ADOPTED CHILDREN AND STEPCHILDREN

THURSDAY, APRIL 6, 1989

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room B-318, Rayburn House Office Building, Hon. Andy Jacobs, Jr. (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
THURSDAY, MARCH 23, 1989

PR #3
SUBCOMMITTEE ON SOCIAL SECURITY
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE ANDY JACOBS, JR. (D., IND.), CHAIRMAN,
SUBCOMMITTEE ON SOCIAL SECURITY,
COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A HEARING ON
SOCIAL SECURITY BENEFITS FOR ADOPTED CHILDREN AND STEPCHILDREN

The Honorable Andy Jacobs, Jr. (D., Ind.), Chairman of the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold a hearing on two proposals affecting benefits for adopted children and stepchildren under the social security program. The hearing will be held on Thursday, April 6, 1989, beginning at 10:00 a.m., in room B-318 Rayburn House Office Building.

Witnesses are requested to provide the Subcommittee with their views on the following proposals:

1. Adopted Children

Under current law, a child adopted before a worker's entitlement to disability or retirement benefits is eligible for child's insurance benefits. A child adopted after a worker's entitlement is not eligible for social security benefits unless he or she was living with, and dependent on, the worker prior to the worker's entitlement. The natural child of a disabled or retired worker is eligible for benefits regardless of whether he or she was born before or after the worker's entitlement.

The proposal before the Subcommittee would eliminate this disparity between the treatment of natural children and adopted children. It would make children who are adopted subsequent to a parent's entitlement to disability or retirement benefits eligible for children's benefits.

2. Stepchildren

Under current law, the stepchild of a social security beneficiary is entitled to benefits if he or she is either living in the household of the stepparent, or receiving half or more of his or her support from the stepparent. H.R. 789 would change this dependency test to eliminate "living with," thus requiring a stepchild to prove he or she receives half or more support from the worker in order to qualify for benefits. In cases where the worker has a natural child from a previous marriage, not paying benefits to a stepchild would usually result in an increased benefit for the natural child because of the operation of the family maximum rule, which limits the total amount of benefits that can be paid based on one worker's record.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Harriett Lawler or Diane Kirkland (202-225-1721) by noon Thursday, March 30, 1989. In order to facilitate scheduling, requests should indicate the specific issues that the witness wishes to address. The request should be followed by a formal written request addressed to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of

MORE

Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions regarding a scheduled appearance should be directed to the Subcommittee staff (202-225-9263).

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. THE FIVE MINUTE RULE WILL BE STRICTLY APPLIED. The full written statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, those scheduled to appear before the Subcommittee are required to submit 100 copies of their prepared statements to the Subcommittee on Social Security office, room B-316 Rayburn House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENT IN LIEU OF PERSONAL APPEARANCE:

Persons submitting written comments for the printed record of the hearing should submit six (6) copies by the close of business, Thursday, April 20, 1989, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearing wish to have their statements distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room B-316 Rayburn House Office Building, on the day of the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

Chairman JACOBS. This morning's hearing is conducted into the question of permitting Social Security beneficiaries to adopt dependents.

Our first witness today is Mr. McEwen. I see he is here, our colleague. You are very welcome, sir. Come forward and educate us.

STATEMENT OF HON. BOB McEWEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. McEWEN. Thank you, Mr. Chairman. I appreciate this opportunity to appear before the subcommittee to make a couple of comments about H.R. 1669, which I think would move toward fairness for Social Security disability beneficiaries.

As you may know, Mr. Chairman, due to the change in demographics and, perhaps, life styles, there are many of us in our thirties who did not have children in our twenties. By the time we decided we wanted to have children, we soon discovered that it wasn't just as simple as it appeared in the health books in the seventh grade. Of couples in their twenties attempting to conceive children.

One in four has difficulty having children. As a result of that there are over 2.5 million applications every year for adoption. Last year, there were an estimated 50,000 nonrelated adoptions.

This has changed significantly, of course, with the introduction of the pill in 1964 and then with abortion coming in the 1970's, a young mother chooses early on to either keep her child or, perhaps, to abort the child. That leaves a very, very small pool for which there is a tremendous demand for adoption.

It is a distressing dilemma that our Nation is facing and has become a popular topic in women's magazines and on the talk shows and all the rest.

As a result of that dilemma that faces America, there is an accentuated difficulty that appears for those who are on Social Security disability insurance. Under the current law, a child born after a worker has become disabled is automatically entitled to children's benefits equal to a percentage of the disabled's benefit payment.

However, a child who is adopted after their parent begins receiving the payments is not entitled to such benefits until he or she meets a certain rigorous test imposed by the Social Security Administration. Clearly, this practice discriminates between adopted children and biological children. The premise of the current law that a person drawing a Social Security benefit might adopt children to increase his benefit ignores important facts about adoption. The average cost of adoption is from $6,000 to $15,000. Much time and expense goes into locating and much prayer, usually, into finding a child available to place in the home.

In addition, adoption involves a thorough scrutiny of one's finances, stability, and home environment. Now a loving couple will adopt a child regardless of whether or not they are eligible for the Social Security disability benefit. Their willingness to give of themselves and to love their child is the paramount reason for the adoption.

However, to insinuate that somehow or another one would go through this trauma to receive an additional payment doesn't

square with reality, No. 1; and, second, if that were the case, that probably would be good, Mr. Chairman, because for those children that are hard to place or difficult then this would help that as well.

With all of that the case, I have introduced H.R. 1669 again this year, along with my colleagues in the Senate, Senator Simon of Illinois and Senator Humphrey of New Hampshire, attempting to correct that and to have the adopted child and the payments to the disabled parent treated in the same manner as if the child had been born to the family.

With that, I could make a quick reference to some funding and, in fact, if you don't mind, I will make a reference to the cost because I know that that is appropriate in any legislation.

Based upon 1986 Social Security Administration data, the average monthly payment to a dependent of an SSDI recipient was $141 per month or $1,697 per year. Multiplying this yearly benefit by the potential 500 SSDI adoptions per year translates into an annual cost of $800,000.

Let me explain how we get that. The number of people adopting each year is about 2 percent of the population. Then we take that times the 20-year span—24 to 44—in which they would be available for adoption. So taking that window times the percentage of the people available, we come up with a benefit of about $848,000 a year if this were to be enacted, as a maximum cost to the system.

I think that equity and fairness more than mediate for this change, and I respectfully appreciate your consideration of our legislation.

Chairman JACOBS. Congressman McEwen, your testimony is excellent, partly because it's concise. It seems to me it carries with it steel logic. I, for one, am persuaded and we thank you not only for your testimony but for the work that went behind it introducing the legislation.

Your one remark about the motivation for adoption is reminiscent of the, I think, rather ludicrous assertion that the welfare girls become pregnant so they can make money. On that, I think, every one should make his own joke.

Thank you for your contribution.

Mr. MCEWEN. Thank you, Mr. Chairman.

Chairman JACOBS. I imagine that your bill is going to be received favorably by my colleagues who are here in spirit. [Laughter.]

Mr. MCEWEN. If there is anything more I can do to help, please let me know. Thank you, Mr. Chairman.

Chairman JACOBS. Thanks, Bob.

We will skip over Congressman Lancaster for the moment and, Mr. Enoff, if you'll give us the benefit of your expertise, which is considerable, we'd be grateful.

STATEMENT OF LOUIS D. ENOFF, DEPUTY COMMISSIONER FOR PROGRAMS, SOCIAL SECURITY ADMINISTRATION

Mr. ENOFF. Thank you, Mr. Chairman. I appreciate the opportunity to be here today and to make some comments on the proposals affecting entitlement to Social Security benefits for children.

The Social Security program is widely recognized for its effectiveness in alleviating poverty among the elderly. Less well-known is

the fact that Social Security is also an important source of income for the children of America.

For example, in 1988, over 3 million children of retired, disabled, or deceased workers received monthly benefits from Social Security, and these payments totaled more than $900 million a month. Beyond those children actually receiving Social Security benefits, over 98 percent of all children nationwide are protected by Social Security in the event of a parent's death.

This morning, of course, we would like to discuss two proposals affecting entitlement to child's benefits. The first, which is included in the administration's 1990 budget, would remove the barrier to the entitlement of adopted children to Social Security and treat them just like natural children. The second is H.R. 789, which would modify the requirements for receiving benefits as a stepchild.

As you know and has already been stated this morning, over the past few years increased public attention has been focused on the importance of encouraging people to adopt children. The President's Commission on Family Policy has endorsed actions to facilitate the adoption of children, as has the White House Working Group on the Family.

We at Social Security have also strongly advocated the need for effective programs to encourage the adoption of children.

To assure that the Social Security program did not contain eligibility requirements that could operate as barriers to adoption, we conducted a program review. As a result of this review, we determined that there was one significant obstacle to paying benefits to children who are adopted after a worker becomes disabled.

Under current law, these children must meet stringent requirements to show that they were dependent on the worker. To be dependent, the adopted child must have been living with and getting at least one-half support from the worker in the year before the worker became disabled or began getting benefits.

The effect of this requirement is to bar the entitlement of the great majority of children who are adopted after a worker becomes disabled or starts receiving Social Security.

Recently, Mr. Chairman, we received a letter from a beneficiary in which she gave her views concerning these rules, and I would like to share some of this letter with the committee. She said:

> When we applied to receive Social Security benefits for our adopted daughter, we were surprised to learn that she was not eligible. When I checked to see why, I was told that it was to prevent Social Security recipients from adopting children to increase their benefits.
>
> This argument makes no sense to me, and it seems to result from the thinking of someone who is cynically suspicious of the motives of adoptive parents. What consideration is given to the elements of love and unselfishness? I know of no one who would go through the paperwork and expense of adopting a child for the purpose of obtaining higher Social Security benefits.

I think this letter echoes our views on this matter and we, of course, are proposing that adopted children be treated exactly like a worker's natural child.

This provision does involve some costs. We estimate $8 million initially and $80 million over 5 years. However, we believe that the proposal is desirable to remove an unwarranted restriction.

H.R. 789 would require that a stepchild get at least one-half of his support from the stepparent in order to qualify for benefits. Under current law, of course, one-half support is required only if a stepchild does not live with the stepparent.

Although the administration has not taken an official position on this bill, I would like to make a few comments, if I might. I appreciate the issue that this bill is intended to address, but I'm concerned that some stepchildren could be unduly disadvantaged by the proposal.

Perhaps, I can illustrate that by an example. If a stepchild lives with a stepparent, the stepparent usually provides a substantial portion of the stepchild's everyday needs for food, shelter, and clothing, even if the natural parent is also contributing to the child's support. Although the stepparent may not be contributing one-half of the stepchild's support, he still may be contributing substantial amounts to make sure that the child is well cared for.

Under present law, this stepchild would qualify for benefits on the stepparent's earnings record because he was living with the stepparent. But, under H.R. 789, he would not qualify if we could not prove that the stepparent was providing one-half of the stepchild's support.

When the stepparent's earnings from work stop, it could be very difficult for the stepparent to continue to provide fully for the needs of the stepchild if Social Security benefits were not payable.

In conclusion, I want to thank you for the opportunity to make these comments on this bill and our proposal, and I would be pleased to answer any questions that you or Mr. Gibbons may have.

[The statement of Louis D. Enoff follows:]

STATEMENT OF LOUIS D. ENOFF
DEPUTY COMMISSIONER FOR PROGRAMS
SOCIAL SECURITY ADMINISTRATION

Mr. Chairman, I am pleased to have the opportunity to discuss proposals affecting entitlement to Social Security benefits for children.

Introduction

The Social Security program is widely recognized for its effectiveness in alleviating poverty among the elderly. Less well-known is the fact that Social Security is also an important source of income for the children of America. In 1988, over 3 million children of retired, disabled or deceased workers received monthly benefits from Social Security, and these payments totaled more than $900 million a month. Beyond those children actually receiving Social Security benefits, over 98 percent of all children nationwide are protected by Social Security in the event of a parent's death.

There are two proposals affecting entitlement to child's benefits under consideration here today. The first, which is included in the Administration's fiscal year 1990 budget, would remove a barrier to the entitlement of adopted children to Social Security benefits and treat them just like natural children. The second, H.R. 789, sponsored by Chairman Jacobs, would modify the requirements for receiving benefits as a stepchild.

Adopted Children Proposal

Over the past few years increased public attention has been focused on the importance of encouraging people to adopt children. The President's Commission on Family Policy has endorsed actions to facilitate the adoption of children, as has the White House Working Group on the Family. We at the Social Security Administration have also strongly advocated the need for effective programs to encourage the adoption of children.

To assure that the Social Security program did not contain eligibility requirements that could operate as barriers to adoption, we conducted a program review. As a result of this review, we determined there was one significant obstacle to paying benefits to children who are adopted after a worker becomes disabled or entitled to retirement benefits. Under current law, these children must meet stringent requirements to show that they were dependent on the worker. To be dependent, the adopted child must have been living with and getting at least one-half support from the worker in the year before the worker became disabled or began getting benefits. The effect of this requirement is to bar the entitlement of the great majority of children who are adopted after a worker becomes disabled or starts receiving Social Security.

Recently, Mr. Chairman, we received a letter from a Social Security beneficiary in which she gave her views concerning these restrictive rules, and I would like to share this letter with the committee. She said,

> When we applied to receive Social Security benefits for our adopted daughter, we were surprised to learn that [she]... was not eligible .... When I checked to see why, I was told that it was to prevent Social Security recipients from adopting children to increase their benefits....
>
> [This] argument makes no sense to me, and it seems to result from the thinking of someone who is cynically suspicious of the motives of adoptive parents. What consideration is given

> to the elements of love and unselfishness? I know of no one who would go through the paperwork and expense of adopting a child for the purpose of obtaining higher Social Security benefits.

This letter echoes our view in this matter. To correct this situation the Administration proposes to eliminate the current dependency requirements for children adopted after the adopting parent becomes disabled or entitled to benefits. Under this proposal, adopted children would be treated exactly like a worker's natural children; dependency would be assumed to exist, and adopted children would be eligible for benefits as early as the month of adoption.

This provision involves some costs--$8 million initially, and $80 million over 5 years. However, we believe that the proposal is necessary to remove an unwarranted restriction on the payment of benefits to adopted children.

H.R. 789

Now, I would like to turn to H.R. 789, which would require that a stepchild get at least one-half of his support from the stepparent in order to qualify for benefits on his earnings record. Under current law, one-half support is required only if a stepchild does not live with the stepparent.

Although the Administration has not taken a position on H.R. 789, I would like to make a few comments. I appreciate the issue that this bill is intended to address, but I think that some stepchildren could be unduly disadvantaged by the proposal.

These concerns can best be illustrated by an example. If a stepchild lives with a stepparent, the stepparent usually provides a substantial portion of the stepchild's everyday needs for food, shelter, and clothing, even if the natural parent is also contributing to the child's support. Although the stepparent may not be contributing one-half of the stepchild's support, he still may be contributing substantial amounts to make sure that the child is well cared for.

Under present law, this stepchild would qualify for benefits on the stepparent's earnings record because he was living with the stepparent. But under H.R. 789, he would not qualify, because the stepparent did not provide one-half of the stepchild's support. When the stepparent's earnings from work stop, it could be very difficult to continue to provide fully for the needs of the stepchild, if Social Security benefits were not payable.

Conclusion

In conclusion, Mr. Chairman, I want to thank you for this opportunity to discuss proposals to change the requirements for receiving Social Security childhood benefits. I hope that this committee will give favorable consideration to the Administration's proposal to improve the protection of adopted children under Social Security by removing the present restriction on entitlement if the child is adopted after the worker becomes disabled or qualifies for retirement benefits.

Chairman JACOBS. Mr. Enoff, on the second piece of legislation, I believe, I'm the author of that legislation, and I don't regard it as any Holy Grail or panacea and any modification the Social Security Administration might care to propose or suggest would be received happily.

Obviously, the problem you alluded to is that the natural children of the worker can in some cases have their own benefits diminished because of the family limitation. There are some rather heartbreaking letters in our files from the mothers of the natural offspring of the workers, disabled workers as well.

It's almost a problem for Solomon, I would think, because on one hand you would tighten up the requirements for eligibility of the stepchild in a subsequent marriage in most cases and, on the other hand, you would remove or make adjustment on the family limitations in such cases.

I assume the second alternative would be expensive, but I only assume it. Do you have an opinion or, if not, could you make a calculation and supply the result to the committee?

Mr. ENOFF. I could try to make the calculation on the second one. I don't have it with me. But I think you are right in terms of the dilemma that's caused. I understand the purpose, and we don't want to discourage the stepparent, obviously, in any way. Sometimes we find, as you alluded to, situations where the children are not in the same household, and there are other kinds of issues that arise there.

We just are trying to prevent that stepparent from being discouraged to continue that support even though it's less than 50 percent. It gets to be very difficult.

Chairman JACOBS. The problem is it isn't only the stepparent who provides the support but, in a sense, it is his or her natural children who are providing some of the support because a part of their benefits are diminished.

I think, obviously, on the humane side of the whole matter, if you wanted to help children, we'd find out how to adjust the cap in meritorious cases, but I don't know what the cost would be. I don't know whether it would be prohibitive or manageable.

Mr. ENOFF. We can try and estimate. Of course, where the natural parent and the stepparent are entitled, the cap is adjusted under law. We do have a combined family maximum, we call it.

Chairman JACOBS. Exactly. Yes. That's what I had in mind.

Mr. ENOFF. But that is not the normal case.

Chairman JACOBS. I'm sure it isn't. If that is not the normal case, then the cost would be less I reckon, if we made adjustment for that extraordinary case.

Mr. ENOFF. What I'm saying is that, normally, one of the parents is not entitled.

Chairman JACOBS. Right. Right.

Mr. ENOFF. Therefore, the cost would not be lessened, necessarily.

Chairman JACOBS. You know the classic case. It's where the man leaves the mother of the children and marries again, and the new wife has some children, and the first wife in many cases—the old story—is very destitute. She sees her check for the children that she's been receiving diminished.

It's almost as important to me as buying another MX missile, to tell you the truth.

Mr. ENOFF. The other thing we haven't been able to do, and we will try to do a little more of, is determine if there would be any offsetting costs from AFDC. That is, again, a very difficult, nebulous——

Chairman JACOBS. Yes. If you could give us the benefit of some actuarial calculation, we would be most grateful for that.

Mr. ENOFF. Let's try to see what we can come up with.

[The following was subsequently received:]

MEMORANDUM June 7, 1989

FROM: James R. McLaughlin S3NS
Office of the Actuary

SUBJECT: Estimated Increase in OASDI Benefit Payments Resulting From a Proposal To Apply Two Separate Maximum Family Benefits in Certain Cases Where the Worker Has Entitled Children in Two Different Households--INFORMATION

Under present law, a Maximum Family Benefit (MFB) is generally applicable to all beneficiaries entitled on a single Social Security earnings record--no matter where they reside individually.

Under the subject proposal:

1. One MFB would apply to the worker's household.

2. A separate MFB would apply to children (and young spouses having these entitled children in their care) not living in the worker's household. A child would be considered living in the worker's household unless the child lived elsewhere for 9 of the last 12 months and the worker did not exercise parental control or authority over the child.

3. Although the worker would be paid only one benefit, his benefit would be subtracted from both MFB's in order to determine the amount available for other entitled people.

4. Aged divorced spouses would continue to be paid outside any MFB, as under present law.

The proposal was assumed effective for benefits paid in fiscal year 1991 and beyond. The estimated additional OASDI benefit payments that would result under the proposal in fiscal years 1991-95 are presented below, based on the alternative II-B assumptions from the 1989 Trustees Report.

Fiscal year	Additional OASDI benefit payments (In millions)
1991	$20
1992	40
1993	60
1994	80
1995	90
Total, 1991-95	290

James R. McLaughlin, Ph.D., A.S.A.
Actuary

Chairman JACOBS. We thank you.

Mr. ENOFF. Thank you. It was good to be here.

Chairman JACOBS. We'll call the first panel. Mr. Lancaster will testify subsequently. Why don't you identify yourselves. Mr. Smurr, you're first, actually and, I think, we can move it along a little faster that way. We know you are all wonderful people. I'll just certify that for record. Identify yourself.

Because of a time limitation today, we are trying to observe the 5-minute rule as carefully as possible. I don't think you are into deep controversy, so we would be grateful for your concise testimony.

STATEMENT OF R. DENNIS SMURR, ASSOCIATE ADVOCACY DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. SMURR. Thank you, Mr. Chairman, and members of the subcommittee.

My name is Dennis Smurr, and I'm an associate advocacy director for the Paralyzed Veterans of America. On behalf of the more than 14,000 members of PVA, I want to take this opportunity to thank you for holding this hearing and allowing us the opportunity to share our views with you on H.R. 1669, the proposal to require the Social Security Administration to treat a child adopted by a SSDI recipient the same as a natural-born child.

PVA has been a very strong advocate for restoring the rights and opportunities of individuals with physical disabilities for more than 40 years. As our name implies, all of PVA's members are veterans and have incurred some form of paralyzing dysfunction of their spinal cords caused either by injury or disease.

Because most of our members rely upon wheelchairs and other aids for their personal mobility, PVA has been and probably remains the most active and effective proponent on the need for a more accessible America.

We also know the many psychological barriers that exists—the unfounded fears and assumptions that nondisabled people have regarding a person with a disability. We know firsthand the heartache of discrimination both conscious and unconscious.

PVA fully endorses the intent of H.R. 1669. This corrective legislation is long overdue. We are very grateful to the Honorable Bob McEwen for being so persistent in leading the cause for this much needed change in the last two Congresses.

We are also very indebted to President Reagan for forming a Federal Task Force on Adoption in late 1987. Also, I want to acknowledge our gratitude to President Bush for his endorsement of this particular legislation and the inclusion of its cost in his fiscal year 1990 budget proposal to Congress.

Mr. Chairman, the SSA policy on adoption discriminates against the very persons who, because of their disability, are mostly likely to need and can benefit from adoption services. The rationale behind this policy which came about through the Social Security Amendments Act of 1972 was to prevent SSA abuse by a disabled person adopting a child just to supplement their monthly benefit.

This may have been a concern at the time, but it is very difficult to accept and understand even today when one realizes how diffi-

cult it is for a handicapped person to complete the rigorous screening process involved in the adoption system.

The current SSA statute is also overly proscriptive because it requires that, to be eligible for SSA dependent benefits, a child be adopted 1 year in advance of the onset of a disability.

Mr. Chairman, unlike a person approaching retirement age, very few of us have the insight to know 1 year in advance when a serious personal disability is going to occur that might qualify us for SSDI. Yet, current policy treats both categories of SSA recipients the same for the purpose of adoption.

Another reason why the current policy is discriminatory is because, under section 402(d)(8), natural-born children or stepchildren who become part of the family unit after the onset of the insured's disability are eligible for secondary benefits.

This is not only inconsistent, it closes the door on a person with a disability from using the adoption process as a legitimate way of having a family.

For many PVA members and for others with disabilities, the barriers to adoption are just as great as the physiological barriers which prevent them from being natural parents. Adoption agencies continue to discriminate against qualified parents solely on the base of disability.

Many persons employed by adoption agencies believe a child's personality adjustment, sex-role development, physical-health patterns, athletic interests, interpersonal relationships, and normal parent-child relations will be adversely affected by a parental disability.

Courts, too, have fallen victim to the notion that people with a disability are less than fit as parents. We spend much of our time and effort as an organization trying to dispel the myths and prejudicial stereotypes regarding people with disabilities.

Stereotypes mistakenly assume that the parent's handicap inevitably handicaps the child. This is simply not true.

Chairman JACOBS. Mr. Smurr, your time has expired. Can you summarize the rest of your statement quickly.

Mr. SMURR. Certainly. Mr. Chairman, PVA respectfully requests your prompt and favorable consideration of H.R. 1669. Many adopted children have been denied SSA benefits for which they would have been legally entitled to if the 1972 amendments had not been made.

Treating the two categories alike ignores the fact that no one can predict 1 year in advance of when they might become disabled or eligible for SSDI.

Thank you, Mr. Chairman. I'll try to answer any questions I can.

Chairman JACOBS. Thank you. Your entire statement will be included in the record.

Mr. SMURR. I appreciate that.

[The statement of R. Dennis Smurr follows:]

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

STATEMENT OF

R. DENNIS SMURR, ASSOCIATE ADVOCACY DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON WAYS AND MEANS

REGARDING H.R. 1669

A BILL TO GRANT NATURAL CHILD STATUS

TO AN ADOPTED CHILD OF A

SOCIAL SECURITY DISABILITY PROGRAM RECIPIENT

APRIL 6, 1989

Chairman Jacobs and members of the Subcommittee my name is Dennis Smurr. I am an Associate Advocacy Director for the Paralyzed Veterans of America. On behalf of the more than 14,000 members of PVA, I want to thank you for holding this hearing and allowing us the opportunity to share with you our views on the proposal to require the Social Security Administration (SSA) to treat a child adopted by a Social Security Disability Insurance (SSDI) recipient the same as a natural born child.

PVA has been a very strong advocate for restoring the rights and opportunities of individuals with physical disabilities for more than forty years. All of PVA's members have incurred some form of catastrophic dysfunction of their spinal cords, caused either by injury or disease. Regardless of the cause, the result has been that because of their disability and society's attitudes toward persons with disabilities, many of our members still face barriers which limit their full and equal participation in everyday American life.

Because most of our members rely upon wheelchairs and other aids for their personal mobility, PVA has been and probably remains the most active and effective proponent on the need for a more accessible America. We do so because we know first-hand what it is like to be denied access to theaters, restaurants, and places of business and employment simply because a doorway is too narrow or an entrance has steps.

We also know the many psychological barriers that exist - the unfounded fears and assumptions that nondisabled people have regarding a person with a disability. We know first-hand the real pain and heartache of discrimination, both conscious and unconscious. For a person with a disability, a day does not go by that some form of subtle discrimination doesn't occur

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that reminds the individual that he or she is different and not permitted to function as a full member of our society. The mere fact that a disabled worker is denied the right to SSA benefits for a child he or she might be fortunate enough to adopt is just one small example of the problem.

PVA fully endorses the intent of H.R. 1669, the proposal to require the SSA to treat a child adopted by a SSDI recipient the same as a natural born child. This legislation, as introduced April 4, 1989, by the Honorable Bob McEwen is long over due. We are very grateful to Mr. McEwen for being so persistent in leading the cause for this much needed change for the past three Congresses.

We are also very indebted to President Reagan for forming a federal task force on adoption in late 1987. The mission of that task force was clear - to analyze all federal adoption policies and state laws, and make recommendations on ways the government could encourage adoption. One of their findings was this SSA policy inequity regarding adopted children, and their recommendation was to endorse H.R. 190, the legislative proposal, which Mr. McEwen had pending in the 100th Congress similar to the one being considered here today.

Also, I want to acknowledge our gratitude to President Bush for his endorsement of this particular legislation and the inclusion of its cost in his fiscal year 1990 budget proposal to Congress. The President stated: "[t]his Administration will look for ways to make adopting easier for loving, capable families." "The President also seeks to remove barriers to adoption, to help ensure that all children have an opportunity to grow up in a loving family and a safe and nurturing home environment."

PVA fully agrees with the President's assessment of adoption in America, and we view the existing SSA policy which denies dependent benefits to children adopted after the onset of a disability as being one of the barriers he seeks to remove.

The current SSA statute is not only overly proscriptive and unreasonable but it is discriminatory. It is overly proscriptive because it requires that a child be adopted <u>one year in advance of the onset of a disability</u> to be eligible for SSA dependent benefits.

Unlike the individual approaching retirement age, very few, if any of us, have the insight to know one year in advance <u>when</u> a serious personal disability is going to occur that <u>might</u> qualify us for the SSDI program. Yet, current policy treats both categories of SSA recipients the same for purposes of adoption.

Take for example spinal cord injury. No one can predict where, when or to whom such a drastic life-altering injury will occur. This though we do know. Each year about 10,000 men suffer a spinal cord injury. Of these, three quarters are between the ages of 15 and 29, the prime years for fathering children. Current estimates show there are approximately 150,000 spinal cord injured males in this age category in the United States. Spinal cord injury can, and often does, result in a subsequent loss of one's procreative ability. For these men, family life and the joy of having and raising children by natural means cannot be realized. Adoption exists as the primary way to fulfill the dream of family life for many of these men.

One such man is PVA member Jimmy Spencer from Temple Terrace, Florida. As Mr. Spencer writes: "On March 3, 1969 in the Central High Lands of South Vietnam, I was shot by a sniper, an AK47 round entered through the left side of my neck and exited through my left shoulder blade. This left me a C-6 quadriplegic."

"There were no bands, no parades, no official thank you(s) on my return home for serving my country bravely and proudly as a member of the Army's Airborne, but now I was a veteran." "I had been told I was needed to protect our nation against injustice. I entered the Army a BOY of nineteen years, not even old enough to vote. I left the Army a MAN, a man of twenty one years old and confined to a wheelchair for life!"

"Then something wonderful happened, I fell in love! Fell in love and got married on March 3, 1972, (three years to the day of my initial injury). My wife, Robyn and I were very happy and still are but, we were left unfulfilled as a family, something was wrong, we had each other but, we had no children. We had no way of conceiving, so we applied to the Social Services for permission to become adoptive parents."

"This was an uphill battle, why do you want to adopt, we were asked. Don't you know you are confined to a wheelchair? I did not give up on adoption, and after eight long years we adopted a child. My family was finally complete. I was happily married and in 1980 I became a father and again in 1983. Two beautiful girls, Kelly and Tuesday Spencer. We were walking on clouds. We had done the impossible, we had done everything everyone said we could not do. But we did it, and we were very proud."

But, then Jimmy Spencer was informed by the SSA that neither Mrs. Spencer nor their children were eligible for Social Security benefits because they had all become dependents after Jimmy had become disabled. They have sought relief from this injustice in the courts but to no avail. Therefore, they and many other veterans like the Spencers seek your help in changing this SSA social inequity.

The current policy discriminates against the very persons, who, because of their disability, are most likely to need and could benefit from adoptive services. The rationale behind this policy, which came about through the Social Security Amendments Act of 1972, was to prevent abuse of the adoption process by a disabled person just to supplement their monthly SSA benefit.

This may have been a concern at the time but it is very difficult to accept and understand even today when one realizes how difficult it is for a person with a disability to complete the rigorous screening process involved in the adoption system.

Another reason why the current policy is discriminatory is because under section 402(d)(8), natural-born children or stepchildren who become part of the family unit after the onset of an insured's disability are eligible for secondary benefits even though they could not possibly have been recipients of support from the insured prior to the disability. Accordingly, it is more accurate to say that the existing legislative policy has been to furnish secondary benefits to every child who would have received support from the insured but for the disability. We think this policy is unfair and discriminatory.

For many PVA members and for other's with disabilities, the barriers to adoption are just as great as the physiological barriers which prevent them from being "natural" parents. Adoption agencies continue to discriminate against an otherwise qualified parent solely on the basis of his or her disability. *Many opinions have been expressed* about the adverse effects on children of being raised by a parent who is physically disabled.

Many people, including personnel employed by adoption agencies, believe a child's personality adjustment, sex role development, physical health patterns, athletic interests, interpersonal relations, and normal parent-child relations will be adversely affected by parental disability.

Courts, as well as adoption agencies have fallen victim to the notion that people with a disability are less than fit as parents. In this context, judges are often asked to settle custody disputes subsequent to a divorce and to rule on petitions of adoption. For many years, courts were reluctant to grant parental privileges to physically handicapped persons. PVA and its members, by nature, deal with these realities. We spend much of our time and effort dispelling the myths and prejudicial stereotypes regarding people with disabilities.

Stereotypes mistakenly assume that the parents' handicap inevitably handicaps the child. That is simply not true. Children are very adaptable; if one path to their enjoyment of physical activities is closed, they will soon find another. Indeed, having a handicapped parent often stimulates the growth of a child's imagination, independence, and self-reliance.

The essence of parenting lies not in one's physical abilities but in the ethical, emotional, and intellectual guidance the parent gives to the child throughout his formative years and beyond. The source of this guidance is the adult's own experience of life; its motive power is parental love and concern for the child's well-being and its teachings deal with such fundamental matters as the child's feelings about himself, his relationships with others, his values, his standards of conduct, and his goals and priorities in life. However limited a handicapped person's strength may be, a disabled parent is a whole person to the child who needs his affection, sympathy, and wisdom to deal with the problems of growing up. Indeed, in such matters a parent's handicap may will be an asset: few can pass through the crucible of a severe physical disability without learning enduring lessons in patience and tolerance.

PVA believes that the SSA policy in question should be changed simply on the basis of its inequitable merits alone. Still, though we know that, given today's federal budget constraints, cost estimates for making such a modification must be made. Therefore, by our own calculation of SSA statistics, we estimate that there are some 500,000 individuals between the ages of 24 and 44 currently receiving SSDI benefits. The 24 to 44 age category was chosen because it best represents today's primary age for marriage and possible adoption.

It is not clear from the available SSA data how many persons in this age category are married, cannot conceive children naturally, or for that fact, even want to adopt a child. Therefore, the 500,000 population pool should be viewed as a most generous estimate of the potential number of adoptive SSDI recipients even though a much larger SSDI population does exist for the entire SSA benefit program.

Furthermore, if we use the generally accepted factor of two (2) percent, which represents the number of married couples in the general population that actually adopt a child, and apply this to the 500,000 potential SSDI recipients then only about 10,000 adoptions might occur over the twenty year (24-44) adoptive life span of each recipient. Multiplying 500, the average number of potential adoptions per year (10,000 divided by 20 years), by the average monthly dependent benefit one arrives at an annual per child cost of $1800.00, and a total cost to SSA per year of $900,000 in additional benefit payments.

These calculations point out two important facts. First, the cost of correcting this SSA inequity is small. Secondly, and more importantly the amount of monetary benefit that might be realized by an adoptive SSDI recipient is certainly not of a magnitude to offset the true cost of raising a child let only the cost of an adoption. Therefore, dispelling the myth that adoptions are going to occur just to increase one's monthly social security benefit payment.

As Judge Weis noted in a 1980 case in Brehm v. Harris, 619 F.2d 1016 (1980), on the constitutionality of the current SSA adoption policy, "[i]t may well be that the number of adoptions that would take place because of the expectation of added social security payments is insignificant. Nevertheless, the perception of abuse, its extent, and the measures required to check it are congressional concerns. Those who would set aside the legislative judgement have the heavy burden of convincing the court that the legislative facts on which the classification is based could not reasonably be conceived to be true...". Id at 1020.

Judge Adams in the same case stated, "[i]t might be well, however, for Congress as well as the Social Security Administration to reconsider whether the classification in question is not far broader and somewhat harsher than necessary to achieve the suggested purpose of protecting against sham adoptions aimed at gaining social welfare benefits. This seems to be particularly so in view of the carefully regulated nature of adoption procedures that now obtain in practically every state". Id at 1021.

And, it should be noted that statutes in practically every state and the District of Columbia permit adoption only by court decree and only after an investigation of prospective parents, the evidentiary hearing by the judge, some period of supervised residency of the child in the prospective home, and a finding by the judge that the adoption is in the child's best interest. The Congress which adopted the 1972 amendments to the Social Security Act presumably concluded that it could not rely on the screening procedures of private and public child placement agencies and state courts to intercept mercenary adoptions. PVA strongly disagrees with this conclusion.

Mr. Chairman, PVA respectfully requests your prompt and favorable consideration of H.R. 1669 which will correct a social inequity that has been allowed to exist for nearly seventeen years. Many adopted children have been denied SSA benefits for which they should have been legally entitled to if the 1972 Amendments to the Social Security Act had not made the dependency test uniform for retirees and disability recipients alike. Treating these two categories alike ignores the fact that no one can predict when he or she will become disabled.

PVA is confident that no ill will was intended when the 92nd Congress enacted these changes; they were simply not as enlightened on the issues of disability as are members of Congress today. We say this because the very same committee that crafted the law in 1972 also made a provision not to terminate a child's benefits by reason of adoption. The committee report states:

> "in many cases, adoptions by a relative more distant than those specified in law (stepparent, grandparent, aunt, uncle, brother or sister) **or by an unrelated person are undertaken to secure for a child the legal and psychological advantages of adoption within a close family group** and that it is inappropriate to deprive the child of his social security benefits because of these adoptions. Accordingly, the bill provides for the continuation of the payments to an entitled child who is adopted, **regardless of who adopts him.**" (emphasis added).

Despite the Congressional concern expressed for all adopted children, the 1972 amendments unfairly discriminate against children who are adopted by a parent with a disability.

Finally, we would like to restate our gratitude to President Bush when, in his fiscal year 1990 budget he sought:

> "a revision to the Social Security Act to treat biological and adopted children equally when their parents are disabled or retired... President Bush supports legislation to remove the special dependency requirement for children adopted after a worker's onset of disability or entitlement to retirement benefits. This change would remove a possible financial disincentive for Social Security beneficiaries to adopt children. (Building a Better America, February 9, 1989, page 109).

Thank you Mr. Chairman for the opportunity to present PVA's testimony. I will be happy to address any question that I can.

Chairman JACOBS. As a point of clarification, sir, you referred to the Social Security Administration's policy. In fairness to the Social Security Administration, and I think you later clarified it in your statement, this rule is not a matter of policy and at the discretion of the Social Security Administration.

This is a statutory problem; hence, Mr. McEwen's bill.

Our next witness, Ms. Seader.

STATEMENT OF MARY BETH SEADER, DIRECTOR FOR PROFESSIONAL PRACTICE, NATIONAL COMMITTEE FOR ADOPTION

Ms. SEADER. Good morning. My name is Mary Beth Seader, and I am the director for professional practice of the National Committee for Adoption. NCFA is a nonprofit, voluntary movement to strengthen adoption and related services.

NCFA was founded in 1980, and its members include 141 local nonprofit voluntary adoption or maternity service agencies.

I would like to thank Chairman Jacobs for inviting us to testify here today and commend the subcommittee for considering this proposal which will directly assist the families involved and send a positive message that adopted children should be treated the same as children born into a family.

Laws in every State protect the integrity of the adoptive family by ensuring that it is viewed the same as a family formed by marriage or birth. When a final decree of adoption is issued by a court, the child is entitled to all the legal protection as a biological child.

Title II of the Social Security Act is the one exception in law where there is a bias against adopted children and adoptive families. We believe this discrimination is unacceptable, and we believe the American people also would find it unacceptable. In fact, Congress went on record last year in opposition to discrimination of adopted children when it passed a concurrent resolution which stated that it is the sense of Congress that Congress opposes discrimination in health insurance against adopted children and that, by denying health insurance coverage to disabled adopted insurers are discriminating against adopted children and establishing a policy contrary to State law.

Just as discrimination against adoptive children by insurance companies establishes a policy contrary to State law so, too, does the Social Security Act which discriminates against adopted children.

We believe that title II should be amended on its face to correct an injustice. However, we are also aware of the budgetary constraints of Congress.

We understand that the rule was implemented as a protection against abuse by individuals who would adopt children in order to supplement their income. Given the adoption situation in this country today, we believe that the opportunity for abuse would be minimal. Each year there are only 50,000 American children adopted in this country.

In 1982, there were approximately 90,000 related adoptions. The law already provides for children adopted by grandparents and stepchildren which make up the majority of related adoptions. It is estimated that there are over 1 million infertile couples and un-

known numbers of fertile couples and individuals who would like to adopt children. The competition for those 50,000 children is stiff.

All adoptions in the United States must be approved by a court. Most States require that an investigation or home study of the adopting family be done by an individual or agency approved by the court before finalization of adoption.

Mr. Stark has introduced very important legislation which would require that all States require home studies before a child is allowed to be placed in a home. He should be commended for taking the initiative of ensuring that basic protections are in place in every State for all members of the adoption circle.

A home study includes an analysis of the family's financial situation and its motivation to be sure that a child's needs will be met. Any intent of prospective adoptive couples to adopt for the purpose of collecting additional Social Security benefits should emerge at this time. It is doubtful that the average benefit of less than $1,800 a year would be an incentive to adopt.

The National Committee for Adoption and the Paralyzed Veterans of America looked at what we knew about adoption and the number of individuals receiving Social Security benefits in an effort to determine the potential costs for expanding benefits to adopted children.

From a formula we developed which is included in my written testimony, it is estimated that the largest number of people that might adopt will be 500 each year. The average monthly benefit to a dependent according to December 1986 Social Security Administration data was $141.46 or $1,697 per year.

If 500 SSDI recipients adopted each year, this would translate into an additional annual cost of $848,810 to the Social Security Administration.

Persons with disabilities and retirees have a more difficult time adopting. Most birth-mothers want the adoptive parents of their children to be in their twenties and thirties and in good health. Agencies have more leeway in selecting families for older children or children with special needs.

There are at least 36,000 children in this country in the foster-care system who are waiting for adoptive homes. Many individuals receiving Social Security benefits would make wonderful parents, and those with a disability would be excellent role models for a disabled child.

New York agencies rely heavily on recipients for foster care for the border babies that are being abandoned in city hospitals by mothers who abuse drugs. The dependent allowance may make it possible for some of these families to adopt them and to prevent future disruptions and long stays in foster care.

It costs at least $6,000 to keep a child in foster care for a year. Certainly, $1,687 is more cost effective than $6,000. It is impossible to calculate the savings in human terms to a child who is provided with a permanent, stable, loving family.

We urge you to support this proposal to eliminate the disparity between the treatment of biological children and adopted children and affirm that Congress supports all families whether they are formed through adoption or by birth.

Thank you.

Chairman JACOBS. Thank you, Ms. Seader.
Mr. Arenstein.
[The statement of Mary Beth Seader follows:]

TESTIMONY OF MARY BETH SEADER, M.S.W.

DIRECTOR FOR PROFESSIONAL PRACTICE

NATIONAL COMMITTEE FOR ADOPTION

My name is Mary Beth Seader and I am the Director for Professional Practice of the National Committee For Adoption. NCFA is the headquarters organization of a non-profit, voluntary movement to strengthen adoption and related services. NCFA was founded in 1980. It has 141 local non-profit, voluntary adoption or maternity service agencies throughout the United States in membership.

In addition to providing technical assistance to its member agencies, NCFA works for the development of adoption- friendly policies and practices by public and private institutions. It also speaks and publishes for adoption and maternity services agencies as well as those families and individuals touched by adoption.

I would like to thank Chairman Jacobs for inviting us to testify here today and commend the Subcommittee for considering this proposal which will not only directly assist the families involved, but also send a positive message that adopted children should be treated the same as children born into a family.

Adoption has long been accepted as a family-building option in our society to connect children in need of homes with families who desire children. As such, laws in every state protect the integrity of the adoptive family by ensuring that it is viewed the same as families formed by marriage and birth. When a final decree of adoption is issued by a Court the child is entitled to all the legal protections as a biological child including inheritance rights. In fact, the adoptive parents names are placed on the child's birth certificate so that there is no question of family membership.

Title II of the Social Security Act is the one exception in law where there is a bias against adopted children and adoptive families. While children born to recipients of Social Security, either retirees or disabled persons, are entitled to receive benefits, adopted children are denied. The law also provides for benefits to children adopted by grandparents receiving Social Security benefits. Children who are adopted by non-relatives, even though they enjoy the same legal status in relation to their family as those born to the family or adopted by grandparents, receive no benefits.

We believe this discrimination is unacceptable and we believe the American people also would find it unacceptable. Congress went on record last year in opposition to discrimination of adopted children when it passed a Concurrent Resolution which stated:

> Whereas at least 36,000 children in the United States are legally free for adoption and are living in foster care waiting for a permanent home;
>
> Whereas many of the children are physically, mentally, and emotionally disabled;
>
> Whereas some insurers deny health insurance to a disabled adopted child on the basis that the disability of the child is a preexisting condition;
>
> Whereas the actions of insurers impose a significant barrier to the adoption of children with disabilities because few prospective adoptive parents can afford to take the risk of adoption a child who will not be covered by health insurance;
>
> Whereas under State law adoption severs the legal ties between the adopted child and the adopted child's birth parents, and creates a legal relationship with the adoptive parents;

Whereas in every State, State law has established that an adopted child has the same legal status as a biological child;

Whereas many insurers cover a biological child with the same disability born to the adoptive parents;

Whereas by denying health insurance coverage to disabled adopted children, insurers are discriminating against adopted children and establishing a policy contrary to State law; and

Whereas the barriers to adoption that deny children a permanent home and prevent couples and single individuals from establishing families should be eliminated: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that Congress --

(1) opposes discrimination in health insurance against adopted children;

(2) urges insurers to treat all adopted children identically to newly born biological children;

(3) urges State legislatures to encourage health insurers to cover adopted children of the insured, subscriber, or enrollee on the same basis as other dependents, with such coverage to be effective from the date of placement for purpose of adoption.

Just as discrimination against adoptive children by insurance companies establishes a policy contrary to State law, so too does the Social Security Act which discriminates against adopted children.

We believe that Congress should pass this bill amending Title II of the Social Security Act on its face to correct an injustice which exists in the present system. However, we also know of the economic concerns with which Congress is faced in this time of budgetary constraints. We would like to address the issue of costs of extending coverage to adopted children.

First, we understand that the rule was first implemented as a protection against abuse by individuals who would adopt children in order to supplement their income. Given the adoption situation in this country today, we believe that the opportunity for abuse of this nature would be minimal. Each year there are approximately 50,000 American children adopted in non-relative adoptions. In 1982, there were approximately 90,000 related adoptions. The law already provides for children adopted by grandparents and stepchildren which make up the majority of related adoptions. Currently, it is estimated that there are over one million infertile couples who would like to adopt children and an unknown number of fertile couples and single persons who would like to build a family through adoption. The competition for those 50,000 children is stiff.

All adoptions in the United States must be approved by a Court. Generally that requires that an investigation (home study) of the adopting family be done by an individual or agency approved by the Court before finalization of adoption. Some states do not require home studies prior to placement of a child in the home, but do require one before finalization. Other states do not require a home study at all. Mr. Stark has introduced very important legislation which would require that States require home studies before a child is allowed to be placed

in a home. He should be commended for taking the initiative of ensuring that basic protections are in place in every State for all members of the adoption circle.

A home study includes an analysis of the family's financial situation to ensure that the family will be able to provide for a child's needs. Prospective adoptive parents' motivation is also assessed. At this time, any intent of prospective adoptive couples to adopt for sole purpose of collecting additional Social Security benefits will emerge. Considering that the average annual benefit for a dependent is less than $1,800, and it costs $91,856 to raise a child to age 18, it is highly unlikely that the money would be an incentive to adopt.

The National Committee For Adoption and the Paralyzed Veterans of America looked at what we knew about adoption and the number of individuals receiving Social Security benefits in an effort to determine the potential costs of expanding benefits to adopted children. According to the National Survey of Family Growth, only 2 percent of the U.S. population will adopt at some point in their lives. Persons with disabilities are likely to have a more difficult time adopting than the average healthy couple. But assuming that 2 percent of 500,444 individuals who received SSDI benefits between the ages of 24 and 44 (ages most likely to adopt) in 1984 were able to adopt, that would mean only 10,000 persons would adopt during their lifetimes. Assuming an "adoptive life" span of 20 years (ages 24 to 44), it is estimated that 500 SSDI recipients might adopt each year. The average monthly benefit to a dependent, according to December 1986 SSA data, was $141.46, or 1,697.62 per year. Multiplying this yearly benefit amount by the potential 500 SSDI adoptions per year translates into an annual cost of $848,810 to SSA.

SSDI population (ages 24-44 inclusive) . . .	500,000
Adoptive potential factor	.02
Potential adoptive SSDI population	10,000
Divided by 20 year "adoptive life"	500
Average dependent benefit	$ 1,687.62
Total additional SSA cost (annually)	$848,810

It was mentioned earlier that persons with disabilities and retirees have a more difficult time adopting. It is particularly difficult for this population to adopt healthy infants, because birthparents generally have a say in the type of family who will adopt their children. Most birthparents want their the adoptive parents of their children to be in their twenties or thirties and in good health. Denying benefits for children approved persons may adopt creates an additional barrier.

Persons with disabilities or older persons have a better chance of adopting older children or children with special needs who are in the foster care system. Currently there are at least 36,000 children who are legally free and waiting for homes. Many of the individuals receiving Social Security benefits would make wonderful parents. Some may even share the same disability as a child awaiting a family and thereby make an excellent role model at overcoming obstacles. Agencies in New York rely very heavily on retirees and persons receiving SSDI to provide foster care for the hundreds of "boarder babies" who are being abandoned in city hospitals by mothers who abuse drugs. These babies are bonding with these individuals. Providing the dependent allowance may make it possible for some of these families to adopt and prevent future disruptions and long stays in foster care. Research by Richard Barth of the University of California at Berkeley shows that older children who are adopted by parents who have provided them foster care

have a much higher success rate than children who are placed with non-foster parents. It is estimated that it costs at least $6,000 to keep a child in foster care for a year. Certainly, $1,687.62 is more cost effective than $6,000.00. It is impossible to calculate the savings in human terms to a child who is provided with a permanent, stable, loving family.

We urge you to support this proposal to eliminate the disparity between the treatment of biological children and adopted children and affirm that Congress supports all families whether they are formed through adoption or by birth.

STATEMENT OF ROBERT D. ARENSTEIN, FAMILY LAW ATTORNEY IN PRIVATE PRACTICE, FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

Mr. ARENSTEIN. Good morning, Mr. Chairman. My name is Robert D. Arenstein. I am a fellow of the American Academy of Matrimonial Lawyers, and I've been practicing family law for approximately 17 years. I have been involved with families that have both adopted children and had stepchildren.

I have been actively involved with the American Bar Association, and I sit on their family law council.

I have reviewed both H.R. 1669 and H.R. 789, which are pending for review before this committee. With regard to H.R. 1669, I see no reason why this committee should not unanimously adopt that bill.

Adoptive children throughout the country are treated by law as if they are the natural children of the adoptive parents, and the child support laws throughout the country have given adoptive parents the same obligation to support those children as they would if the child were born to them.

States require that the entry of a judgment of adoption shall establish the same relationships, rights, duties and obligations between the child and the adoptive parents as if the child were born to the adopting family.

It seems only right that the Social Security law should be amended to correct the inequity of treatment that has occurred under the current law between adoptive children—those that have been adopted after benefits have occurred to the entitler—and the naturally born child.

I see no valid reason for the discrimination which exists today between a natural born child and the adopted child. So I would recommend adoption of H.R. 1669. It would conform the Social Security Act to treat adoptive children as they are treated throughout the several States under the State law.

I will now discuss the benefits that are provided under H.R. 789. In that proposal, you are asked to consider a means test, rather than having a stepchild merely live with the stepparent. A family including stepparents includes natural parents as well; you have a custodial natural parent who has generally remarried to a parent who is the stepparent, and you have a noncustodial parent if that parent is alive who may or may not have remarried.

Each natural parent has support obligations to support the child born of the marital relationship. In circumstances where one of the natural parents is deceased, that stepparent also has a right, if he wants to or if the natural parent decides, to allow an adoption to occur.

Stepparents have also developed relationships with children in question and have even taken on the support obligations of those children, especially if the natural parent is dependent upon the stepparent to support the family.

The rights and obligations of stepparents have begun to increase over the years. Recent cases have addressed the issues of when an obligation to support a stepchild can be imposed upon a stepparent.

Now a stepparent relationship alone does not confer rights or obligations with respect to a stepchild.

There are at least two theories on which a support obligation has been imposed upon a stepparent on the basis of equitable estoppel. One is when the stepparent stood in loco parentis relationship to the child, and the second exists when there is a perceived psychological or emotional bond with the child.

Certain States only recommend the first theory. Some States recommend the second theory. I have given you in my written testimony various examples of when stepparents may be obligated to support a child of their marriage.

Now various organizations throughout the country have been set up to fight for increased rights for stepparents. It seems reasonable in my opinion to impose a means test in looking to determine the benefits to which a stepchild would be entitled.

There is generally more than one person who is responsible for the stepchild, for example, the natural parent on the other side. Generally, a court may impose an obligation to the noncustodial parent to support.

If you allow the stepchild to obtain benefits, the stepchild would certainly take away, possibly, if the maximum benefit has been reached, moneys which the natural born or adopted children would be entitled to. In fact, you do have another person who may be obligated to support.

What I might say, if you're looking to reform your bill from the comments from Mr. Enoff, you might look at whether a State imposes an obligation on a noncustodial parent in determining whether or not there should be benefits which would flow from the Social Security Act. Then, you wouldn't be depriving necessarily the natural children or the adopted children in the bill that you've introduced.

Most States do not at this stage impose an obligation on stepparents to pay support unless they meet one of the tests that I've spoken about earlier or unless there is a voluntary obligation undertaken by the stepparent.

So to eliminate the loophole that you have with living together, I think, is a positive thing and, if there is another obligor that has to pay for support, that that stepchild should not necessarily get benefits.

I thank you for your time, and I'm ready to answer any questions you may have.

[Statement of Robert D. Arenstein follows:]

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ROBERT D. ARENSTEIN

TESTIMONY ON
H.R. 789 and Adopted Children Proposal

I appreciate the opportunity to appear before you today to express my views regarding the proposal to amend the Social Security Act regarding Social Security Benefits for Adopted Children and Step Children. I am a Fellow of the American Academy of Matrimonial Lawyers and a member of the Board of Managers of the New York Chapter. I am also a member of the Executive Committee of the New York State Bar Family Law Section. I have been practicising Family Law for approximately 17 years and ahve been involved with families that have both adopted children and stepchildren. I am a member of the Bars of New York, New Jersey, Florida and The District of Columbia. I presently sit on the Executive Council of the American Bar Association's Family Law Section.

I have reviewed both Congressman Jacobs and Congressman McEwen Bills which are pending review before this committee. With regard to Congressman McEwen's Bill, I can not see any reason why this committee should not unanimously endorse it. To begin with, Adoptive children throughout the country are treated by law as if there are the natural children of the adoptive parents. In New York, Domestic Relations Law Section 117 (f) grants the right of inheritance of an adoptive child to be the same as the child were the natural child of the of the adoptive parents. Under the Domestic Relations Law of New York, the adoptive parents have the same obligation to support that child as they would have if the child were born to them. In fact under New Jersey Law NJSA 9:3-30 B, the statute specifically states that "The entry of a Judgment of Adoption shall establish the same relationships, rights, duties and obligations between the child and the adopting parent as if the child wre born to such adopting parent in lawful wedlock. It seems only right that the Social Security Law be amended to correct the inequity of treament that has occurred under the current law between an adoptive child and a naturally born child. In effect under the adoption laws of each state in the Union that fact is already taken into account. I see no valid reason for the discrimination which exists today between the natural born child and the adoptive child. I would recommend the adoption of the Bill which is being proposed by Congreesman McEwen. It would conform the Social Security Act to treatment Adoptive Children are given throuhout the States.

To now discuss the issue of benefits for stepchildren under the proposal of H.R. 789. In this proposal, we are now ask to consider a means test to be considered, rather than a stepchild merely "living with" the stepparent. n discussing a stepchild, there are generally two natural parents in the picture. There is the custodial natural parent, who has remarried and the noncustodial natural parent, who also may have remarried. Stepparents under Family Law are generally defined as "a person who is not the natural or adoptive parent of a child and who is or was married to one of the natural or adoptive parents of the child. Each parent mhas a support obligation for the child born of their relationship based on their ability to support. In the circumstances where a natural

parent is deceased and one of the natural parents has remarried we may have a situation in which a step parent exists with no second natural parent on the otherside. Stepparents have also developed relations with the children in question and have even taken on the support obligation of these children especially if the natural parent is dependent upon the entitlement spouse.

The rights and obligations of stepparents have begun to increase over the years. Recent cases in New Jersey have addressed the issue of when an obligation to support a stepchild can be imposed upon a stepparent. A stepparent relationship alone does not confer rights or obligations with respect to the stepchild. There are at least two theories on which a support obligation has been imposed upon a stepparent on the basis of equitable estoppel. One is when the stepparent stood in loco parentis relationship to the child and two is when there exists a perceived psycological or emotional bond with the child. New Jersey recognizes the former in certain limited circumstances but not the latter.

In a few jurisdictions, a court may award the physical custody of a child to a stepparent, if it is found to be in the child's best interest. A Florida District Court of Appeal awarded custody of a thirteen year old child to the stepmother because she was the psycological parent and his father had physically abused him. In another jurisdiction, a stepparent was awarded custody of a seven year old deaf boy because he was close to her and to his stepsiblings and his father could not communicate in sign language.

In one case in New Hampshire, while joint legal custody was to the mother and stepfather, the stepparent was awarded physical custody of his stepdaughter. The stepfather was the only father the child had known, his children had been raised with her as brother and sister and a family unit had been formed.

Various organizations have been set up to fight for increased rights for stepparents. It seems reasoble to impose a means test in looking to determine the benefits that a stepchild would be entitled to. There is generally more than one person who may be responsible for the stepchild and the mere fact that a stepchild was "living with" the stepparent will certainly take away from the other children especially when there is no responsibility.

Most states do not impose an obligation on stepparents to pay support unless the stepparents meet one of the tests which I spoke of earlier or a voluntary obligation is undertaken. To eliminate the either or test, closes up a loophole where a child is not really supported by the stepparent, could deprive children that are from a share of their entitlements.

I thank you for your time and am ready to answer any questions you might have.

Chairman JACOBS. Thank you for your testimony, Mr. Arenstein. Ms. Sweeney.

STATEMENT OF EILEEN P. SWEENEY, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Ms. SWEENEY. Mr. Chairman, I would like to make three points. First the provision to permit after-adopted children to receive Social Security benefits on their parent's account in H.R. 1669 would make a significant difference in the lives of these children and their families.

Adopting a child and securing disability benefits are unrelated events, as they should be, which are only tied together by the current need under the statute to establish chronologically when a child began being supported by the wage earner. It would be much fairer to both the children and their parents if the current rule is eliminated.

Second, I understand the concerns that underlie the stepchild provision. As came up in your discussion with Mr. Enoff, I think, the fairer thing to do would be to revisit how the family maximum works. It's just as unfair where there are two families of natural children who are trying to share on the same account as where there is a family with natural children and a family with stepchildren of the wage earner on the same account.

With regard to the language in H.R. 789, there is an alternative support test that SSA uses which probably would be fairer than the 50-percent test if that is the way the subcommittee goes, and that is that some children are required to show that the support they receive from their parent is regular and substantial. That requires less mathematical precision and deals with some of the problems where each parent is earning pretty much the same amount or the mother who may be the wage earner earns a little less and, yet, the stepchildren are very dependent upon that income.

SSA requires under that test that the support must be large enough to meet an important part of the ordinary expenses of the child. I think that might be a more appropriate test to use here.

The last thing I would like to point out is that, when I was thinking about these issues for this hearing, there is a related problem in AFDC right now, which is that children who get Social Security benefits since 1984 have been required by the Congress to be incorporated into AFDC units.

The result of that is that the rest of the children in that unit get less from the AFDC program and the child who gets the Social Security benefit is actually being forced to share it with children who are not dependents of the wage earner. The wage earner, basically, is getting less of a return on his or her money because the title II child is being forced to share with everybody else.

My guess is that this has been looked at most frequently from an AFDC perspective as a way of sharing funds but, in fact, from an insurance perspective, it doesn't really work. If you get a title II benefit and the worker earned the money and expects upon his death or disability that those funds will be available to their dependent child, to then have the AFDC program come along and say that other children in the household, including possibly in the

future stepchildren who couldn't meet the support test in H.R. 789, will receive less from AFDC, if they are a poor family. That means that the natural children who might be in that same family will actually get less from Social Security because they will have to share what little they do get from Social Security with the stepchildren because they will be so poor and on AFDC that AFDC will reduce the amount the family unit receives.

This is an issue that I would urge this subcommittee to look at from the insurance perspective rather than from the welfare perspective and determine whether or not what the Congress did in 1984 is really fair to children on Social Security and their wage earner parents.

The Supreme Court has already issued its opinion on the general issue in the 1984 amendment, and it's going to remain the law unless the Congress decides to reverse itself.

Thank you.

[The statement of Eileen Sweeney follows:]

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TESTIMONY OF EILEEN P. SWEENEY, STAFF ATTORNEY,
NATIONAL SENIOR CITIZENS LAW CENTER
BEFORE THE SOCIAL SECURITY SUBCOMMITTEE

APRIL 6, 1989

Mr. Chairman, thank you for this opportunity to testify today.

My testimony covers four points: With regard to after-adopted children, I urge the Subcommittee to amend the Social Security Act to permit all adopted children, including those who are adopted after the parent's onset of entitlement to benefits, to be eligible for dependent's benefits. Legislation providing entitlement for these children should also require the Secretary to notify those children who are affected of the change in the law.

My testimony on stepchildren includes three points. First, there are many stepchildren who are in need of the Social Security benefits. Second, it will sometimes be impossible for a dependent stepchild to establish one-half support. The result of such a requirement would be to hurt some families who have been dependent on the wage earner. There may be alternative language which would help to address the concern underlying H.R. 789 while better protecting stepchildren who are dependent on the wage earner. Third, the change proposed in H.R. 789 will aggravate another problem which currently arises for poor children in poor families who receive dependents' benefits. I discuss this problem and suggest that, regardless of the action taken on H.R. 789, the Subcommittee should take action to correct this current problem.

I. <u>The current bar against payment of benefits to after-adopted children is inequitable and discourages the adoption of children.</u>

The proposal to eliminate the restriction upon eligibility for benefits for after-adopted children would provide a much more rational rule for beneficiary families. Right now, the decision about whether an adopted child is eligible turns upon often days or months between the date of entitlement and the date of the adoption.

The case of a family in Middleville, Michigan is a good example of the type of problem which the current statutory language creates. Mr. and Mrs. B already had adopted one child when, in 1977, they spoke with Family and Child Services of Calhoun County about their interest in adopting a second child. In December, 1977, the agency submitted the papers for adoption. The family was approved to adopt a child in October, 1979. Mr. and Mrs. B brought their new son home in April, 1980 when he was six weeks old. The adoption was finalized in June, 1981.

Meanwhile, on December 13, 1979, after Mr. and Mrs. B have been approved for the adoption, Mr. B filed his application for disability insurance benefits. SSA denied his application on March 1, 1980. After appeals, an

administrative law judge (ALJ) awarded him benefits on March 4, 1981, for the period beginning December, 1979. The child had lived with Mr. and Mrs. B "continuously for substantially all of the first year of his life and for one year before a determination of his father's eligibility for disability benefits." (ALJ opinion, page 3)

The ALJ found "that the child was not brought into the home of the wage earner and his wife, nor adopted by them, for the purpose of getting child's insurance benefits." (ALJ opinion, page 4) However, bound by the law, the ALJ concluded that, "Because the child was not born until more than seven months after the wage earner's period of disability commenced, the claimant could not have lived with said wage earner and could not have been supported by said wage earner at any time during the year before the wage earner became eligible for disability insurance benefits." As a result, child's benefits were denied.

The problem faced by the B family and other families who have adopted children or wish to adopt children would be solved if the language limiting eligibility for after-adopted children was deleted from the statute.

It would be very helpful if there was one addition to this provision. In cases where SSA has denied eligibility to an after-adopted child in the past few years, SSA should be required to notify those beneficiary families that the child is eligible for benefits as a result of the legislation. It is very likely that SSA has a computer code for denial of these children which, even if somewhat overinclusive, would permit a notice to be sent to a fairly well targetted group. If SSA says that this is not possible then, at a minimum, Congress should consider requiring that SSA include information about this change in the law in one of its stuffer notices which are sent to all beneficiaries on a quarterly basis. Even better would be a requirement that both forms of notice be used. The direct notice to children who have been denied benefits will catch many of the children but will not catch those who never applied because SSA told them that they were not eligible and should not bother to apply.[1] The stuffer notice is not as focussed but may have a better chance of picking up some of the children whose relatives are currently in pay status where the child was discouraged from applying. However, it will not pick up the group of children who do not have relatives in pay status and who have received denial notices in the past. These children are better assisted by the direct notice.

If the Congress does not require that SSA issue notices to these children, SSA will not issue such notices.

II. <u>The limitation on payment of benefits to some stepchildren presents a difficult question of choices between children who may be equally dependent and equally impoverished. It is difficult to see how H.R. 789 improves the situation.</u>

There is no question that there is a problem when children from two households must share benefits under the same family maximum. The result is that the benefits which children in each household receive are not adequate to meet

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1. In the Michigan case, which I have provided to the Subcommittee, the ALJ stated: "From testimony adduced at the hearing, it appeared that the wage earner had been discouraged by the Administration in even filing the application for child's insurance benefits, having been told it was a wasted effort and that he would be denied." (ALJ opinion, page 2)

their needs. This is just as true when there are natural-born children of the wage earner in two households as when there are natural-born children in one household and stepchildren in another.

The same problems exist in making generalizations about child support. There are many men who are not supporting their children.[2] This is true for the wage earner who is divorced from the children's mother. It is also true for the natural parent of the stepchild, resulting in the need for the stepparent to assist in supporting the child.

While I understand that it could be expensive, if a change is needed, it is probably one which permits a different calculation of the family maximum in cases where there are two households. Just as it was recognized that the needs of a divorced spouse should be addressed outside the calculation of the family maximum, it is possible that the changes in family structures in our society may necessitate a review of whether the current family maximum rules make sense.

The one-half support test has a nice mathematical precision which often is not reflective of the realities of people's lives and can ignore the fact that the children in a particular case really are dependent upon their stepparent.

For example, SSA has a ruling which states that where a person left his wife because she had filed for divorce and he died one week later, his stepchild is not entitled to benefits on his record because he had not provided any support to the child in that week. Due to the change in their circumstances, SSA concluded that the child had no reasonable expectation of continuing support and therefore could not meet the one-half support test. This was true even though, up until that one week, the child had been supported equally by both her parents ("both worked and both earned about the same amount.") Social Security Ruling 61-52.

Other problems can exist in cases where the stepparent's income fluctuates or where the absent parent of the stepchild makes only spotty contributions to support. Where both circumstances occur in the same family, it is likely to be a matter of luck whether the support from the stepparent's contribution is just above or just below the 50% requirement.

Similar problems will exist in households where both parents are working and the family is low-income. If the parents are earning approximately equal salaries and if the absent parent is also making even a very small contribution to the child, even if only on a sporadic basis, SSA will find that under the 50% test the stepchild would not be eligible. This would be true even though it is clear that the stepchild was very dependent upon the wage earner and, upon his death, the wife and stepchild will have only a tiny

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2. "An unprecedented number of children live in single-parent homes, many without adequate or any support from the other parent." 1989 Ways and Means Committee Green Book, page 632. In 1985, 39% of the 8.8 million women who had children under the age of 21 with absent fathers were never awarded child support and did not have an agreement that they could receive child support. Id. "Many of the women who were awarded child support payments did not receive the full amount they were due. In 1985, less than half (48 percent) of the 4.4 million women owed child support payments received the full amount, about 26 percent of the women received less than they were owed, and 26 percent received no payment at all." Id. pp.633-634.

bit more than 50% of the income coming in to the house that they had when he was alive. While a 50% loss of income would be difficult for any family, it becomes even more burdensome when the family is already living at the margin.

Where there are so many potential variables, the 50% rule appears to be an inaccurate screen, especially when it is left to stand without the alternative "living with" language. It will hurt some whom the Congress probably intends to help.

It appears that the alternative bases for determining eligibility, "living with" or 50% support, have worked fairly well in the past as proxies for determining the dependence of stepchildren. If the decision is to remove the "living with" language, then it may be appropriate to modify the 50% requirement. There is another test which SSA uses in determining whether the parent of an illegitimately-born child was supporting the child which may be useful here. Under that test, SSA looks to see whether the contributions of the stepparent have been "regular and substantial."

In defining the term "contributions for support," 20 C.F.R. §404.366(a)(2) requires that:

> "Contributions must be made regularly and must be large enough to meet an important part of your ordinary living costs. Ordinary living costs ar the costs of your food, shelter, routine medical care, and similar necessities. If the insured person only provides gifts or donations once in a while for special purposes, they wil not be considered contributions for your support. Although the insured's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the insured's control, such as illness or unemployment, will be disregarded unless during this interruption someone else takes over responsibility for supporting you on a permanent basis."

This test is less than 50% (which is also defined in the same regulation, 20 C.F.R. §404.366(b), and allows the decision-maker somewhat more flexibility to take into account the factual situation in the case. It should assure that most of the problems which could arise under a flat 50% rule would be eliminated.

While I believe that SSA's standard as it is currently applied to illegitimately-born children is too restrictive based on the statutory language which it implements, and many courts have agreed, it would be more appropriate than the 50% test as the only basis for determining dependency of step-children.

III. <u>The change proposed for stepchildren in H.R. 789 highlights a problem which poor children receiving Social Security benefits in poor families have faced for the last few years which is badly in need of correction.</u>

In 1984, in DEFRA, the Congress changed a rule related to counting income in AFDC households. In the past, a child who had another income source, such as Social Security, could be excluded from the household for AFDC purposes and the child's income would not affect the other family members' AFDC grant. This rule was amended in 1984 to provide that all children in the family and any income of any child in the family are to be included in determining the family's eligibility for AFDC. 42 U.S.C. §602(a)(38).

The result of this amendment has been that, despite the fact that benefits paid under the Social Security insurance program are intended for the use of the individual for whom they are paid, in poor families where one or two children are eligible for Social Security but others are not, the Social Security benefit of the eligible child is being used to meet the needs of not only the child for whom it is intended but also of the other adults and children in the household. This is because the family receives less in AFDC because one or two of the children receive Social Security. As a result, the family will have to use the child's Social Security income to meet all of the family's expenses.

In addition to the general problem this creates, the result of amending the stepchild provision could be to make some struggling families a lot poorer and to force the family to live off one or two children's Social Security benefit. It is not all that uncommon for there to really be three sets of children eligible for benefits on the account of the wage earner. First, there are the children of the first marriage. Then, there are the step children from the second marriage. And, often there is the half-brother or half-sister of the stepchildren (and the children of the first marriage) who is the natural child of the wage earner and his/her second spouse. Consider the following hypothetical:

> Mr. A has one child from his first marriage, who lives with his first wife. In his second marriage, to Ms. B, he had another child. Ms. B's two children from her first marriage also live with them. The absent father of these two children is unemployed and sends $25.00 per month, most months. Ms. B and Mr. A earn identical salaries at minimum wage jobs. Mr. A dies suddenly in a car accident. Ms. B worries that she can not afford childcare costs with only her salary, but hopes that with Social Security she and the kids can get by. Currently, all four of Mr. A's children would be entitled to receive benefits on his wage record. But, if the two stepchildren had to meet the 50% test, SSA would probably say that they were not entitled to benefits. The result would be that Mr. A's child from the first marriage and Mr. A's and Ms. B's child would receive a somewhat higher benefit.
>
> At this point, Ms. B may decide that she can not afford to work and pay child care. If Ms. B has very little or no income as a result of the death of her husband, or at some later point, when she goes to apply for AFDC, her family will receive less because the one child receives Social Security. Even though, if H.R. 789 were the law, the Congress would have said that her other children, Mr. A's stepchildren, were not eligible for Social Security on his record, the result of the AFDC rules will be that these children actually share in the one child's Social Security benefit. The one child's benefits will have to be used to support the stepchildren. As a result, the natural child in the same family with the stepchildren, who are his half-siblings, will actually be worse off as a result of a change like the one proposed in H.R. 789. And, so will the rest of the family.

Basically, contrary to all notions of how the Social Security system is intended to work, it is no longer always true that the benefits which a child receives on a wage earners' account have to be used for that child. If the

child lives in a poor family, those benefits are no longer protected. The Supreme Court, in Bowen v. Gilliard, 483 U.S. ___, 97 L.Ed.2d 485 (1987), upheld the constitutionality of the AFDC provision as it applies to all sources of income which a child in an AFDC household might have. It also concluded that:

> "Nor does the simple inclusion of the support income in the benefit calculation have any legal effect on the child's right to have it used for his or her benefit. To the extent that a child has the right to have the support payments used in his 'best interest,' he or she fully retains that right. Of course, the effect of counting the support payments as part of the filing unit's income often reduces the family's resources, and hence increases the chances that sharing of the support money will be appropriate." 97 L.Ed.2d at 504-505.

This is fairly startling material when considered from the perspective of Social Security. 42 U.S.C. §407(a) very clearly bars the transfer or assignability of Social Security benefits.[3] And, Congress has been so concerned that this provision be adhered to that in 1983, Congress added §407(b) which limits the ability of other legislation to affect the language in §407(a).[4] So, despite the fact that the AFDC provision has the same practical consequence as the takings barred by §407(a), poor children who receive Social Security actually receive much less than they are entitled to because the AFDC program is using their funds to support the other members of the family.

This fact is spelled out very clearly in the proposed regulations which SSA issued last August. On August 22, 1988, SSA issued a proposed regulation to "clarify" the responsibilities of the representative payee who receives the Social Security benefit for a child who is in an AFDC unit. 53 Federal Register 31886 (August 22, 1988). In proposed §404.2040(a)(1), SSA states, generally, that it will consider that the representative payee has met his or her obligation to assure that the funds are used "for use and benefit" of the beneficiary "if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." However, proposed §2040(a)(2) creates an exception to this rule for the poorest children:

> "(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary is a member of an Aid to Families with Dependent Children (AFDC) assistance unit, we do not

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3. Section 207(a) of the Social Security Act, 42 U.S.C. §407(a), provides:

> "The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

4. §407(b) provides: "No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supercede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section."

consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit."

Even more bizarre, this treatment is far worse than the child would receive if s/he were receiving SSI benefits. 42 U.S.C. §602(a)(24) specifically provides that a child who is receiving SSI benefits will not be treated as part of the AFDC unit and therefore s/he is not required to have the SSI benefit shared with the others in the family.

This problem needs consideration from the Social Security insurance perspective. Wage earners have an expectation that benefits which are paid based on their earnings will be used only for the benefit of the person(s) for whom they are intended.[5] And, the children who are their beneficiaries should not find that the benefit for which their parent paid FICA taxes has been diluted by the requirement that it be shared with others who are not the dependents of the wage earner.

Thank you for inviting me to testify.

5. In Weinberger v. Weisenfeld, 420 U.S. 636 (1975), the Supreme Court focused on the fact that the female wage earner " not only failed to receive the same protection which a similarly situated male worker would have received, but she also was deprived of a portion of her own earnings in order to contribute to the fund out of which benefits would be paid to others." 420 U.S. at 645. See also Califano v. Goldfarb, 430 U.S. 199 (1977). While gender discrimination may not be at issue here, it seems reasonable to extrapolate that the wage earner also has the right to expect that benefits which are paid on his or her wage record are not taken through the back door by the Government through a requirement that the child's Social Security benefit be used to replace AFDC dollars which would otherwise be paid to others in the family unit who have no right to benefits on the wage earner's account.

Chairman JACOBS. Thank you very much.

Mr. Gibbons.

Mr. GIBBONS. Mr. Arenstein, it's been quite some time since I've practiced any law in this area, and I haven't kept up with what's gone on in the other States. I didn't even know then what was going on in the other States. My own practice was carried on in Florida, of course.

Is there a great deal of difference between adoption laws, custody laws in the different States? It seemed to me that there was at one time. Is it that way now still or is there any uniform adoption code?

Mr. ARENSTEIN. There is a uniform adoption act which is presently being proposed by the American Bar Association. That act will be heard at our meeting in Honolulu in August and, in fact, the National Committee for Adoption had quite a bit of input into it. There are some things they don't like, they do like. But that act is probably going to be passed by the American Bar Association at this Honolulu meeting with amendments.

So, at the present time, there isn't a uniform act that is law or that is proposed by the National Commission's uniform State laws, but we're getting there. The adoption laws in most States right now are similar but they are different. I mean, there are different tests in different States for home studies, surrender of rights, termination, whether or not it's an agency adoption or private-placement adoption.

They have, like in California, very, very liberal adoption laws whereas in other States they are more conservative. You can do a private-placement adoption a lot easier there, whereas in New Jersey you would need to go through an agency, generally. There are some exclusions for private placements.

Mr. GIBBONS. Have any States adopted so far the uniform law?

Mr. ARENSTEIN. Not yet.

Mr. GIBBONS. It is still in the proposal stage?

Mr. ARENSTEIN. It's been in the proposal stage for a couple of years now, and it has been circulated quite extensively, and it is now very close to being adopted by the American Bar and, if it is, I'm sure you will see it being adopted by many of the several States—by most of the States.

Mr. GIBBONS. Do you think that, perhaps, the Congress ought to look at that law and, perhaps, adopt it as our test or whether or not an adoption was appropriately in order for the paying of benefits?

Mr. ARENSTEIN. I'm a little biased to the point that I was on the council when it was approved by the family law section, and I do have some reservations with it and, hopefully, they are going to be changed by Honolulu. There are some parts of that law that I don't personally agree with, and that is mandating a totally confidential or nonconfidential open adoptions—things like that.

In general, the specifics of the adoption law, that is, they are trying to make uniform, I think, would be something for Congress to look at with specific things that I don't agree with and I wouldn't necessarily push myself.

Mr. GIBBONS. I realize, from a humanitarian point of view, your heart goes out to the adopted child. That's bad enough to just being

an adopted child. Of course, the worst thing to be would be a child in the same position and not adopted, but your heart goes out to them, and you want to encourage the adoption, but there is such a adversity or, at least, there seems to be such an adversity.

I'm not sure we wouldn't create all kinds of problems. Go back to the so-called Greek incident, which we had many, many Greek adoptions, and that is what caused some of the restrictive provisions that are now in the Social Security Act.

Mr. ARENSTEIN. I would tell you that, in your own State of Florida, we have had some problems in the adoption area—especially, the stepchild-adoption area—where, in many States under stepchild adoptions, they don't require financial disclosures on the documents before the court.

In a case that I was involved in a long time ago called Baby M, which I'm sure you've heard of, they had an adoption that took place in your State which turned out to be a fraud adoption and was knocked out by the court subsequently when we went down there.

I'm admitted to practice in Florida as well as other States, and we found that many of the brokers who were involved in the surrogacy area were using the adoption laws in the States that were very liberal on stepchild adoptions to subvert them and get these adoptions through.

There was at that time, when I came before Congressman Lukens' subcommittee, when there was no residency requirement on adoption in Florida. We have since changed that law.

Mr. GIBBONS. You came down over a weekend.

Mr. ARENSTEIN. We came down when you had three Governors within a space of 2 weeks. You had one at the end of the year, you had a temporary one, and then you had another one.

HHS down there worked with us to try to put in a residency requirement.

If you wanted to look at a uniform law like they've done with custody—we now have a uniform child custody law, which is the law of the land, and the Parental Kidnapping Act is a Federal act which was passed to unify that.

I certainly would recommend looking at something to unify the adoption laws and maybe make them a little more liberal than they are because what's happened is older people in their forties who want to adopt have had more trouble going through the adoption process, and these are the people who have waited to have children a long time and find they can't have children now, and have gone through more rigorous requirements.

I chair a committee in New York State. That is the State bar committee that recommends adoption reform. We are presently undergoing some statutory recommendations to our State legislature to try to change it. I would be pleased to submit to the committee some of that, if you are looking into the adoption area.

Mr. GIBBONS. Thank you very much. I don't want to take up your time. Do any States have prohibitions against handicapped persons adopting children? For example, we have this wh[illegible]lchair veteran over here. Maybe, he can answer that question.

Are there States that prevent adoption by the handicapped?

Mr. SMURR. I know of no State that has in writing of any kind of provisions, but it's subtle discrimination. You roll into an adoption agency rather than walk in, and you've got two strikes against you right off the bat.

There are very many people that still live under the assumption that a person with a disability is being punished for some wrongdoing, for something they've done in their lives, so they don't want to impose that punishment on a child. That's a sorry statement to make, but that's true.

Mr. GIBBONS. We have an interesting subject here, and I appreciate what you've done to help us understand it.

Chairman JACOBS. The panel has made a useful contribution. There might be further questions. The clock says don't ask them. So we dismiss the panel with our gratitude.

Thank you.

Our colleague, Mr. Martin Lancaster, from North Carolina will be our next witness.

STATEMENT OF HON. H. MARTIN LANCASTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, ACCOMPANIED BY HIS CONSTITUENTS, MR. AND MRS. DARRYL CONNER

Mr. LANCASTER. Mr. Chairman, with your permission, I would like constituents of mine to join me at the table if they may.

Chairman JACOBS. Well, we're not serving lunch, so I don't see any expense to it. Go ahead. [Laughter.]

Mr. LANCASTER. Mr. Chairman and Mr. Gibbons, thank you for allowing me to testify this morning. I want to discuss only one of the several issues that are being addressed by these hearings. Specifically, I will speak on the need to extend certain Social Security benefits for children adopted by a disabled parent—the subject about which you were just inquiring of the previous panel.

Mr. Chairman, as you know, current law does not allow for Social Security benefits to be paid for a child adopted after a worker becomes disabled, unless the child was living with the worker in the United States, and was receiving at least one-half of his or her support, for 1 year prior to the worker becoming disabled and entitled to disability benefits. It's a hard-and-fast rule with no exceptions: An adopted child is not entitled to benefits unless these criteria can be met.

The policy implications of current law are understandable but misdirected. The law does not allow disabled individuals to adopt children solely for the purpose of collecting additional Social Security benefits. However, this policy is seriously flawed since an individual might have any number of natural children after becoming disabled, and all of these children would be eligible for Social Security benefits. This law simply discriminates against disabled parents who must adopt their children.

Mr. Chairman, the fear is that people will want to adopt children for the sole purpose of qualifying for benefits. A letter to me from Dorcas Hardy, Commissioner of Social Security, states that:

> These requirements—referring to the criteria—are intended to assure that benefits are paid only to those children who lose a source of support when the worker became disabled. Without such safeguards, children could be adopted for the sole

purpose of qualifying them for benefits. Although such a motive does not exist in most cases, we believe reasonable precautions are necessary.

This problem within the current law was called to my attention by a couple within the Third Congressional District that I represent in North Carolina. Mr. Darryl Conner, my constituent, who is here with me today, became disabled at a young age. He is a quadriplegic and has advised me that he is unable to have children.

In 1981, Mr. and Mrs. Conner adopted a little girl who was 9 months old at the time. Because their daughter did not meet the criteria according to the current law, she is not entitled to benefits.

I do not believe that the law as it is currently written is at all fair to individuals like the Conners. If the child were the natural child of the Conners, she would be entitled to benefits.

Mr. Chairman, I firmly believe that we should keep our eyes open to individuals that would abuse this or any other entitlement. I would be open to considering some other safeguard to protect the Social Security Program. However, I also feel that we must act responsibly and fairly to our disabled citizens who are not attempting to abuse any system but are in fact being treated differently due to circumstances over which they have no control.

I urge this subcommittee to consider favorably any proposed legislation that would eliminate the disparity between the treatment of natural and adopted children under the Social Security Program.

I will be happy to yield to questions, and I'm sure the Conners would be happy to do as well, Mr. Chairman.

Chairman JACOBS. Thank you.

Mr. GIBBONS. I don't have any questions for you, but I wonder if the constituents would like to tell their story.

Mr. CONNER. I was 18 years old when I broke my neck and became paralyzed. You don't know at that time in your life that you really want children but, due to breaking my neck, I lost that capability, and that was my only means then, and it's like the law states now that you had to have the child a year before the accident, where you became disabled. It is not a fair law right now.

Mr. LANCASTER. Mrs. Conner, would you like to say anything?

Mrs. CONNER. Do they want to know how we got our child?SR. -Folios: 72-77 -Date: August 22, 1989 -Subformat:

Mr. GIBBONS. That would be fine.

Mrs. CONNER. When we got married, we had not planned to have children because we knew that we couldn't. She is related to me as far as my half-uncle's child. They had one that was taken away from them for abandonment, and we had kept our little girl since birth when they would bring her to the house. You know, we kept her.

They had separated and decided to go back together, and they couldn't live with the child. So they gave us a chance to take her. We had become attached to her, and we took her.

When my husband goes for his reviews, we asked one time about it, and they told us they would check into it. The people read and read, and they said, "No, if you were her grandparents, you would be eligible, but you're not her grandparents." They said, "Keep checking with us, and it might help to write your Congressman about it."

Just this past April, we decided. We hadn't written or found out anything about it. We wrote a letter. We have gotten so many letters back and supported us. We've really appreciated it, and we appreciate this chance for them to present this to you.

Mr. GIBBONS. The child was related to you?

Mrs. CONNER. Yes, sir.

Mr. GIBBONS. I guess you started off just by babysitting.

Mrs. CONNER. Yes, and then we adopted her.

Mr. GIBBONS. How old is the child?

Mrs. CONNER. She will be 8 years old May 20.

Chairman JACOBS. Thank you. You are to be commended for it.

Congressman Lancaster, you've mentioned the possibility—I think, it probably needs a modifying word—a remote possibility of fraud. I think it is inherently incredible that people would sacrifice themselves to the rearing of a child for fraudulent reasons unless, of course, the child happened to be heir to a billion dollars, which we all have to take into consideration.

Apart from that happy circumstance, it just doesn't wash.

Mr. LANCASTER. It really doesn't, Mr. Chairman. If there need to be some safeguards put in, if you want to limit the number of children or if you want to limit the age of children so that you don't have a situation where you're adopting a teenager or whatever but is a legitimate exercise in the desire to have children and to rear them and to make a home for them, I think that that certainly should be taken into account and that we should encourage it.

We hear so much from prolife people that adoption is what we should be encouraging rather than abortion, and here is the Government actually discouraging adoption. We certainly should never be in that position, and I think the Social Security now is discouraging what I think is a very worthwhile social objective.

Chairman JACOBS. Mr. McEwen has made an enormous contribution for the work he's done on this legislation, and you've added a contribution, especially, by giving these good people the opportunity to come and be heard on the record, and literally fleshing out the concepts. We are particularly grateful to you folks and to your exquisite Congressman.

Mr. LANCASTER. We appreciate this opportunity, Mr. Chairman.

Chairman JACOBS. Thank you very much.

Our final panel, Ms. Burr and Ms. Davis, representing respectively Parents Without Partners and the Stepfamily Association of America. Welcome to the committee.

STATEMENT OF MARY RYAN BURR, INTERNATIONAL VICE PRESIDENT LEGISLATIVE AFFAIRS, PARENTS WITHOUT PARTNERS, INC.

Ms. BURR. Thank you, Mr. Chairman. It's very nice to be here today to talk about H.R. 789.

Faring well or welfare—a child's financial picture, in today's topsy-turvy family life. The choices adults make give children one parent—the never married parent—or two parents, which are the natural ones, or more parents, which are stepparents. Today's marriages can bring not only the birth of a child but, also, a ready-made family.

The financial picture changes for today's families when either spouse moves on and, often, many months later, stepfamilies are born. Today's young people are either biological children or stepchildren. It is our desire to protect Social Security from coming between biological children and stepchildren.

Parents Without Partners is concerned about all of these families and the welfare of both the biological children and the stepchildren.

Today, this committee faces a distressing situation; who gets a percentage of a tragedy? I have a friend with a couple of children who married for the second time a couple of years ago. Just after her marriage, her husband was diagnosed with throat cancer. His health has deteriorated, and he has just had major surgery. I wanted her to be with us today to talk about her situation, but she can't because she has to use every moment of her spare time off work to utilize it to take care of her husband.

It's frightening for her to face the loss of income because of her husband's unexpected illness. I asked her about stepchildren receiving benefits, and her immediate answer was, "Oh, yes."

Then I asked her to remember back a short time ago when she was a single parent—did she still feel stepchildren should share the benefits with the biological child. After an electric pause, she said, "Let me rethink my position."

Life was difficult back in those days for her because her exspouse rarely paid the child support, and life was a struggle for her and the children. I seem to recall she had even had a part-time job to help make ends meet.

Perhaps, a very small redeeming quality is the fact that a child's natural parents may have a legal contract for child support. If the Social Security disability benefit was to be paid to the biological child, it would contribute to fulfilling that obligation. The child of a single custodial parent has a birthright to be cared for as well as by the noncustodial parent.

We must do all we can to ensure that the biological parents are responsible for their children that they bring into the world. Perhaps the best long-term statement that a noncustodial parent can make is to allow a child to see the love in spite of the parent's absence through the child-support payments. Is this not the truest demonstration of responsibility that a child can receive from a parent who is not in custody.

When a disabled parent has a child-support agreement, most assuredly the custodial parent and that family and the disabled parent and the stepfamily will suffer both emotionally and financially. Because of the support agreement held in the home of the natural parent, there may be less financial burden placed on the biological child.

I am a divorced mother of two children. The children's father has remarried and has a stepchild. Since my divorce, I have experienced many court and mediation experiences for the sole purpose of being able to ensure our daughters receive their child support. Surely this would not qualify me to be called a bitter mother. America's children deserve to receive their benefits in the fulfillment of their child-support contract.

Today, many custodial single parent families are not receiving their child support. My own ex-spouse states his obligation is to his new wife and her son. If he were to become disabled, the family benefit could potentially be split four ways; 25 percent to each biological daughter, 25 percent to his stepson and, under the family maximum rule, 25 percent to his wife because she does not work outside the home, and her son is under 16 years of age.

We are not here to discuss the fact that nearly 50 percent of natural parents do not receive all or part of their child-support payments. We must look at Social Security as the American method of protecting a child's birthright.

What rights do stepparents have today? If we must protect the financial benefits of the stepchild, perhaps, legislation is needed to establish what the rights of stepparents and stepchildren are.

Marriage is a contract between a man and a woman for richer or poorer, in sickness and in health. Stepchildren, we regret, are not mentioned in this or any other traditional legal document.

As we look at the overall picture, I am sure everyone will agree that this is a situation filled with concerns. Parents Without Partners will not object to the removal of the phrase, "Was living with or," from the Social Security Act, but we do strongly object to unfairness for any child. It is true a stepchild and the family may use the one-half support rule to claim partial benefits, but it is not our intention that any legal expenses should be a result of this need and add a burden to a family who is already experiencing financial burden.

If this wheel is broken, fix it. Don't add another patch. Why not follow the method used by families that apply for college financial assistance. The income of all parents—natural and step—is taken into consideration. Fairness may win a small battle in the war against poverty.

Thank you.

Chairman JACOBS. Thank you.

Ms. Davis.

STATEMENT OF GINGER DAVIS, MEMBER, BOARD OF DIRECTORS, STEPFAMILY ASSOCIATION OF AMERICA

Ms. DAVIS. Thank you for this opportunity to address the subcommittee about the part of H.R. 789 dealing with stepchildren. My name is Ginger Davis. I speak to this issue from several vantage points. I'm on the board of directors of the Stepfamily Association of America, a national organization. I'm currently a Ph.D. candidate at the University of Maryland School of Social Work doing research on the intergenerational relationships of grownup stepchildren and their stepparents. I'm also a past president and founder of the Montgomery County, MD, chapter of the Stepfamily Association of America.

Personally, I'm several things. I've been a stepchild my self for over 40 years. I was adopted by my stepfather when I was 4 years old. I have been a stepmother to my husband's three children for over 12 years, and my own daughter and son have been stepchildren for more than 13 years.

I am a Social Security contributor. My first husband is. My second husband is. From these vantage points then, here are my comments.

It seems to me that an adult must bear responsibility to the dependent persons he or she brings into the world or pledges through adoption to care for. It also seems to me that an adult must bear responsibility to the children he or she implicitly chooses to relate to in a parent/child relationship when he or she chooses to marry those children's biological parent. The Social Security system allows workers to choose to spread their benefits over their biological and adopted children by having as many of each as he or she chooses and can acquire.

Why not, too, the stepchildren workers also choose to help raise? How are these parent/child relationships so different in their dependency characteristics that they should be worth less when the benefits are handed out? We expect adults to share with all the children they choose. Even though stepchildren are less directly chosen, they are still chosen dependents.

I'm concerned about the dependency test which would be left if H.R. 789 is passed: That the stepparent must have provided at least one half of the stepchild's support. In illustrating my concern about the amount in the dependency test, I will discuss three common stepfamily situations, and in only the first is it likely that the at-least-one-half test would be satisfied.

The first scenario is that of the very common stepfamily structure of a stepfather who lives with his wife and her children—his stepchildren—and the children's biological father provides no support. He may have been ordered to, but he does not. Here I imagine that satisfying the at-least-one-half rule would often obtain, and I imagine that so both because the financial support from the absent biological parent tends to be low or nonexistent and because men—the stepfathers in these scenarios—tend to make more than women—the biological moms in these stepfamilies.

Therefore, the stepfather's percent of the support to the stepchildren living in his home will often be at least the 50 percent needed for the requirement. So, for the stepfamilies where a stepfather lives with his wife and her children and these children have no other support other than from the parents in that home, the at-least-one-half amount would probably result in many stepchildren getting the benefits they deserve as dependents the man chose when he married their mother.

If he has biological and/or adopted children living elsewhere, they will share his Social Security benefits with his stepchildren, and that seems appropriate. His dependents ought to share in his financial benefits just as they ought to share his time and his parental energies.

The second scenario illustrates how a stepparent's proportion of support is commonly diluted by the absent parent's partial support, making reaching the at-least-one-half minimum difficult.

I won't read that. It's in the statement, and it's been alluded to by several other testifiers here.

The third scenario illustrates how the gender of the stepparent interacts with the at-least-one-half rule, thereby having the rule ef-

fectively exclude an entire type of stepchild from stepparent benefits even though I'm sure that was not the intent here.

In this stepfamily situation, a man with children marries a woman without children. Since men in our society tend to marry own-age or younger women, stepfamilies of this structure are not uncommon. Let's assume the usual, that both of these adults are workers. Let's assume his child or children live with them, which would be unusual. In these situations, it's unusual for the absent biological mom to be contributing financially to the children's support; therefore, the stepmom's income is helping support the stepchildren.

However, since she is female and, therefore, not likely to be earning what her spouse is, her percentage of the stepchildren's support, though probably significant, is not likely to satisfy the at-least-one-half rule. Therefore, should she become disabled, her stepchildren will simply lose her of their support and the loss will not be ameliorated by her benefits to them. Her retirement, while his kids are still minors, is unlikely due to the direction of age differences between husbands and wives. It seems unacceptable that the stepchildren in these homes be denied their stepmom's benefits just because she's female and unlikely to earn more than her spouse.

I realize these scenarios are simplistic. They don't begin to deal with stepfamilies formed through death and remarriage nor do they deal with stepfamilies formed when a never-married biological parent marries for the first time—I wonder here if ethnicity might be a factor in this particular issue since proportionately more black children are born to never-married moms than other ethnic group children at this time.

Stepfamilies are complex families and this simple at-least-one-half rule may not serve very many stepchildren.

I'm struck by the complexity of this subcommittee's task and appreciate the difficulty of completing that task, but I wonder what the issue is here today as I read this. If the issue is who gets a worker's Social Security benefits, then I think the answer ought to be his or her dependents, in which case all of a worker's dependent children ought to share the benefits. But, if the real issue is, are some of the worker's children more worthy or entitled than others—and that may be the real issue here—then I suggest that the answer should be, no. Are stepchildren less worthy of support than are adopted children?

The legislation we're considering today seems to be decreasing the difference between the treatment of adopted and biological children while at the same time increasing the discrimination between stepchildren, and biological and adopted children.

While I understand the interest in protecting biological children's interests—remember I have two of those—unless you are really willing to legitimize the idea that stepchildren are less worthy or entitled to support than are biological and adopted children, you need to modify H.R. 789. I'm not exactly sure how, although I have some ideas; possibly, by not changing the stepchild benefit rules at all. I just can't see how to justify restricting step-

children's protection to only those who fit the at-least-one-half stipulation and, without justification, it just seems like discrimination.

Thank you.

[The prepared statement follows:]

Testimony of Ginger Davis at the 4/6/89
Hearing on Social Security Benefits
for Adopted Children and Stepchildren:
Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives

Thank you for this opportunity to address the Subcommittee about the part of H.R. 709 dealing with stepchildren. My name is Ginger Davis. I speak to this issue from several vantage points. I am on the Board of Directors of the Stepfamily Association of America as the Mid-Atlantic Regional Representative, and I am a past President and founder of the Montgomery County, Maryland Chapter of SAA. I am currently a PhD candidate at the University of Maryland at Baltimore in the School of Social Work and Community Planning, and am doing research on the intergenerational relationships of grown-up stepchildren and their stepparents. I have been a stepchild for over forty years and was adopted by my stepfather when I was four. I have been a stepmother to my husband's three children for over twelve years, and my own daughter and son have been stepchildren for over thirteen years. I am a social security contributor, the first wife of a worker who contributes, and the second wife of another worker. From these vantage points then, here are my comments:

It seems to me that an adult must bear responsibility to the dependent persons he or she brings into the world, or pledges through adoption to care for. And it also seems to me that an adult must bear responsibility to the children he or she implicitly chooses to relate to in a parent/child relationship when he or she chooses to marry those children's biological parent. The social security system allows workers to choose to spread their benefits over their biological and adopted children by having as many of each as he or she chooses. Why not too the stepchildren workers also chose to help raise? How are these parent/child relationships so different in their dependency characteristics that they should be worth less when the benefits are handed out? We expect adults to share with all the children they choose. Even though stepchildren are less directly chosen, they are still chosen dependents.

In the ideal world where child support was adequate and always paid, where disability and life insurance was purchased by all, and where adequate retirement income was ensured, then these children in question, the stepchildren of social security beneficiaries, wouldn't need those stepparents's benefits--the biological parents would have made provision entirely.

Since that is not the world in which these stepchildren live, I think it is right that they be eligible for their stepparents's social security benefits. Because the benefits must be shared with the worker's other dependents (up to a family maximum), I can see how some sort of "dependency test" might be necessary. I can see how just "living with" a stepparent who is a social security beneficiary might not be reason enough to have the stepparent's beneficiaries include the stepchildren.

But I am concerned about the only other dependency test which would be left: that the stepparent must have provided at least one-half of the stepchild's support. In illustrating my concern about the amount in the dependency test, I will discuss three common stepfamily situations. In only the first would it be likely that the at-least-1/2 test would be passed.

The first scenario is that of the very common stepfamily structure of a stepfather who lives with his wife and her children (his stepchildren), and the children's biological father is providing no support. Here I imagine that satisfying the at-least-1/2 rule would often obtain. I imagine that's so both because financial support from absent biological parents tends to be low or non-existent, and because men (the stepfathers in these scenarios) tend to make more than women (the biological moms in these stepfamilies). Therefore the stepfather's percent of support to the stepchildren living in his home will often be at least the fifty percent needed for the requirement. So for the stepfamilies where a stepfather lives with his wife and her children, and where the children have no other support other than from the parents in that home, the at-least-1/2 amount would probably result in many stepchildren getting the benefits they "deserve" as dependents the man chose when he married their mother. If he has biological and/or adopted children living elsewhere, they will share his social security benefits with his stepchildren, and that seems appropriate. His dependents ought to share in his financial benefits just as they ought to share his time and his parental energies.

The second scenario illustrates how a stepparent's proportion of support is commonly diluted by absent parent's partial support, making reaching the at-least-1/2 minimum difficult. This type of stepfamily scenario can occur when children's biological parents are both married to other people. Maybe all four "parents" are workers, and probably, due to co-mingled funds in the two households, all four contribute at least something to the children's support. Let's assume that the children live with their biological mother (the usual situation) and their stepfather. Let's assume the biological father is paying child support, but as usual, it's certainly not half of what it costs to raise the children. Let's also assume that the stepfather earns more than the biological mother. In these cases, the stepfather's proportion of support is probably the largest proportion of his stepchildren's support, yet falls short of the at-least-1/2 minimum due to it's being diluted by the partial support coming from the absent parent(s). Those children would have a very strong dependency on that stepparent's support, yet would not be eligible for any of his benefits under H.R. 789. I find it very difficult to see how such a situation is acceptable. And the biological mothers in these cases are not even free to "move on" to find a spouse who can provide their children more support. There's nothing to help fill the gap from the stepparent's lost income. And isn't that what these social security benefits were designed to do, help fill the gap?

The third scenario illustrates how the gender of the stepparent interacts with the at-least-1/2 rule, thereby having the rule effectively exclude an entire "type" of stepchild from stepparent benefits. In this stepfamily situation, a man with children marries a woman without children. (Since men in our society tend to marry own age or younger women, stepfamilies of this structure are not uncommon.) Let's assume the usual, that both are workers. Let's assume his child or children live with them, which would be unusual. In these situations, it's unusual for the absent biological mother to be contributing financially to the children's support, therefore the stepmother's income is helping support the stepchildren. However, since she's a female and therefore not likely to be earning what her spouse is, her percentage of the stepchildren's support, though probably significant, is not likely to satisfy the at-least-1/2 rule. Therefore, should she become disabled, her stepchildren will simply lose her part of their support and the loss will not be ameliorated by her social security benefits to them. (Her retirement while his kids are still minors is unlikely due to the direction of age differences between husbands and wives.) It seems unacceptable that the stepchildren in these homes be denied their stepmother's benefits just because she is female and unlikely to earn more than her spouse.

I realize my scenarios are simplistic. They don't deal at all with stepfamilies formed through the death of a biological parent and remarriage of the surviving parent, nor do they deal with stepfamilies formed when a never-married biological parent marries. (And might ethnicity be a factor here since proportionately more Black children are born to never-married mothers than other ethnic group children at this time?) Stepfamilies are complex families and a simple, at-least-1/2 rule may not serve very many stepchildren. The issue is further complicated by stepfamily divorce. If stepchildren were receiving a stepparent's benefits for example, and the biological and stepparent divorce, do the benefits stop? Should they stop only when/if the biological parent remarries?

I am struck by the complexity of this Subcommittee's task and appreciate the difficulty of completing that task.

If the issue today is: Who gets a worker's social security benefits? then the answer ought to be: His or her dependents--in which case all of a worker's dependent children ought to share the benefits. But if the real issue is: Are some of a worker's children more worthy/entitled than others? (and that may be the real issue here), then I suggest that the answer should be: No. Are stepchildren less worthy of support than are adopted children?

H.R. 789 seems to be decreasing the difference between treatment of adopted and biological children while increasing the discrimination between stepchildren, and biological and adopted children. While I understand the interest in protecting biological children's interests, unless you are really willing to legitimize the idea that stepchildren are less worthy/entitled to support than are biological and adopted children, you need to modify H.R. 789. I'm not sure how; possibly by not changing the stepchild benefit rules at all. I just can't see how to justify restricting stepchildren's protection to only those who fit the at-least-1/2 stipulation. And without justification, it just seems like discrimination.

Mr. GIBBONS. I thank both of you. It is very interesting testimony. I imagine because of the unusual background you've had, you have had a lot of time to think about it. I will read your testimony very closely.

Chairman JACOBS. Thank you, Mr. Gibbons.

Ms. Davis, I notice in your testimony you used two terms interchangeably at times—stepchildren or adopted children—and equated the two and, in your case, you said that you've been a stepchild for some 40 years or so, but that's not exactly accurate, is it? From what you said, you've been an adopted child since you were four, haven't you?

Ms. DAVIS. That's true.

Chairman JACOBS. The sad distinction that seems important, I think, to some members of the committee, you also referred to it—is that some of the worker's children are more worthy than others.

In our society and our laws and our scheme of things, the old expression, "It's your baby," does mean biological and extended by statute to adoption. Once the adoption takes place, it is your baby under legal obligations. There was testimony previously to the effect that, in some States, some progressive legislation is developing to require stepparents or to put obligations on stepparents to pay support to stepchildren.

You also mentioned the unfortunate phenomenon that there is a certain presumption that males earn more than females. Obviously, that's not always true in any given case, but it's generally true. We hope that that phenomenon is fading some or we hope it will fade altogether into nothing at all.

The stepfather who has natural children and earns more than the custodial and natural parent to whom he is now married also subtracts from that greater earning prior obligations to support children.

It seems to me logically you have to make an adjustment in his income for what we might call overhead with respect to the new marriage; that overhead being the obligation for supporting those who are actually his children.

I guess the thing—I don't guess—I know the thing that keeps running through my mind here is the old Marine Corps expression: There's no anchor tied to the stepperson from doing what your, I assume, stepfather did when you were 4 years old and that is making the adoption. That is sort of like getting married when you make an adoption. It's a commitment.

Stepparenthood, although in many, many instances, is loving and devoted and creates obligations in terms of that person's own morals, many, many times does not, as soon as the stepfather loses interest in the custodial mother down the road in an awful lot of cases and maybe wasn't too crazy about the stepchildren but put up with them because of his interest—I would say interest in that case rather than affection—with the custodial mother.

Would you care to comment on those ideas.

Ms. DAVIS. Yes. First of all, it's my understanding that most parents who have absent children do not make support payments and, if they do, they make less than what they are ordered to. So most stepfathers do not have money going out of their home to their natural children. In fact, if they were to become disabled, their natu-

ral children getting benefits might be a real benefit because it might be the first time those children have seen money coming from that source. That's not legal, but it happens.

Chairman JACOBS. In my day in practicing law, I seem to recall that the natural parent who was making adequate or obeying the court orders—what the court determined to be adequate support payment to the natural children—wasn't doing so because of one of the items Ms. Burr stated cited:

That the stepson now is my obligation, the past is prologue; those aren't my obligations.

I found that to be a factor in the delinquency of the father in making payments to the other children.

Ms. DAVIS. I wouldn't doubt that that kind of myopia enters into it. I think it's abominable. Nonetheless, the point is that the father's income does not often go outside of the house, which I think was your point, that that ought to perhaps ought to be taken into account, that some of the household income does go out. My reason is, simply, that very often that doesn't happen.

The other thing is it's a very murky area here; feelings versus responsibilities, what we think might happen versus what does happen.

To be sure, when I was searching for a husband—when I was courting my husband, I was not looking for three more children. I had two perfectly good children. I got three more children in the bargain, one of whom even lived with me. When he was courting me, he wasn't looking for two more. He had been a parent 10 years longer than I had, but he got two real little ones.

We've been married over 12 years. He's raised my babies. I'm a grandma to his kids' children. It's all become intertwined here, and that is a problem.

Chairman JACOBS. Your husband has not adopted your children?

Ms. DAVIS. No. And that's something else I want to speak to. After we had been married a year or two and he had learned to care for them a great deal, he asked what would I feel about him adopting them, and the stepchild in me spoke up—the child of divorce in me spoke up—and said, "Thank you very much. I appreciate greatly that gift you've just offered, but I won't speak for my children at this age, but I won't let them give up their father."

Chairman JACOBS. Is that in a case where the father has given them up where he's not paying the obligation?

Ms. DAVIS. No. No. I'm just saying that as a point. Stepfamilyhood allows people extended relationships, and I think we have to watch out that we don't think in these rigid terms we're used to and still think of two parents only.

Children handle more than two aunts and uncles, more than two grandmas and grandpas routinely and, believe me, they can handle more than two moms and dads. I usually tell people in stepfamilies I don't advise adoption unless it is to protect children from something.

You can express the sentiment, but I don't advise it because don't forget that adoption means giving up something.

Chairman JACOBS. It means making a commitment.

Ms. DAVIS. It means giving up a parent, to the child.

Mr. GIBBONS. You might suffer a financial loss.

Ms. DAVIS. That's a good point, too. One might.

Chairman JACOBS. I have glanced at our witness list over and over again, and we don't have Solomon coming in here today. So we are going to have to wrestle with this as a committee when we go to executive session.

The first bill we're considering today, I think, is a fait accompli. It is going to happen. The second one which I introduced, when I introduced it at the time, I said it needed work, and I am still of that opinion. I don't think it is going to end up the way it is now, if it ends up at all, but I think it is probably an area that's the thorny one. We are just going to have to try to pull some thorns around here and see what we can do to meet this pathos that we've heard so much about really on both sides of the equation. We'll do our best.

We thank you for your contribution, and it concludes the hearing.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

[Submissions for the record follow:]

Adoptive Parents Committee, Inc./New York City Chapter
210 Fifth Avenue, New York, N. Y. 10010
MEMBER OF THE ADOPTIVE PARENTS COMMITTEE, INC., STATE ASSOCIATION
"Not a placement agency"
MUrray Hill 3-9221

April 17, 1989

Robert Leonard
Chief Counsel
Committee on Ways and Means
1102 Longworth Building
Washington, D.C. 20515

Dear Mr. Leonard:

I am writing this letter to you concerning the ruling dealing with Disability Benefits for children adopted after their parent has gone on disability.

As President of the Adoptive Parents Committee for New York City, I am urging you to change the law in favor of allowing these children to receive benefits and not to be discriminated against.

There should not be a special class of citizen when it comes to adopted children. This is a stigma we have spent years trying to do away with.

Thank you for your time and concern.

Sincerely,

Lawrence Gellerstein
President, New York City Chapter

SANDER M. LEVIN
17TH DISTRICT, MICHIGAN

COMMITTEES:
WAYS AND MEANS
SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES

WASHINGTON OFFICE:
323 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4961

DISTRICT OFFICE:
SUITE 1120
NORTH PARK PLAZA OFFICE BUILDING
17117 WEST NINE MILE ROAD
SOUTHFIELD, MI 48075
(313) 569-4444

Congress of the United States
House of Representatives
Washington, DC 20515

April 25, 1989

Chairman Andrew Jacobs
Social Security Subcommittee
B-317 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

On April 6, our Subcommittee held an important hearing on Social Security and adoptions. I am writing to request that the enclosed letter be made a part of the hearing record.

In preparation for the Subcommittee's hearing, I had contacted the Baragar family in Middleville, Michigan. Their story is a particularly poignant example of the impact of current law on disabled parents who adopt. Unfortunately, Mr. Baragar's disability prevents him from traveling so he was unable to appear as a witness. However, at my request, he has furnished us with a letter describing his experience. It is this story that I would like to include in the record.

In addition to his letter, Mr. Baragar has provided us with detailed documentation on his case. I would ask that these documents be filed with the Subcommittee as part of the background materials from the hearing.

Thank you for your assistance. I look forward to working with you and the entire Subcommittee on this important issue.

Sincerely,

Sander Levin
Member of Congress

SML/sf
enclosure

4/17/89

-1-

The Honorable Congressman Levin,

I was informed that a congressional committee will be convening for the purpose of scrutinyzing under what circumstances and conditions adopted children will be eligible for social security benefits.

My wife and I would like to bring to your attention how the current social security laws have affected our adopted son, Brook. We have two children. The eldest, Amy was adopted in 1975 and Brook in 1981. In March 1977 we applied for our second child. We brought our son home in April 1980. We felt very blessed that our "pregnancy" was only three years as opposed to the usual five to seven years waiting period in most adoption situations.

During the interim, I became disabled as a result of faulty injection equipment emitting celagen and cyanide gases at my place of employment, causing my lungs to be severely burned. I applied for social security disability on December 13, 1979 (see attached sheet for social security/adoption info).

-2-

During the time I have received social security benefits my daughter has also received monetary assistance; however my son has not qualified under the ~~C~~current laws.

We feel strongly that our son Brook has been grossly discriminated against. He is, in the eyes of the law, a second class citizen or a non-person and is not now nor will be in the future eligible for any benefits — unless the laws are changed.

A naturalized citizen in our country can qualify for social security, or if my wife and I had a biological child while I was disabled or if I fathered an illegitimate child — he/she would also qualify. However, a child born of this land, such as our son can not be a participant ~~in the extent of my~~

Our son was not adopted to provide additional income for our family's needs (see statement by judge-document #) We had always wanted at least two children. A son would round out our

family and would continue to carry on the family name. One of my main concerns is in the event of my death my son would not receive any social security benefits.

I have contacted numerous attorneys to pursue this endeavor; however no one felt it was a worthwhile project to tackle, until at such date the laws are changed. My last resort was the A.C.L.U. and they also refused to become involved.

We do hope you will give this inequity in our social security laws your utmost concern and attention. Please see enclosed facts sheets. Feel free to contact us for further information.

Truly yours,

Howard E. Barager

DELAWARE PARALYZED VETERANS ASSOCIATION, INC.
Suite 101 — Lafayette Building
25 South Old Baltimore Pike
Christiana, Delaware 19702
(302) 368-4898

RECEIVED
APR 4 1989
Ways and Means
Subcommittee on Social Security

March 31, 1989

The Honorable Andy Jacobs
Chairman
House Subcommittee on Social Security
B-316 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Jacobs:

On behalf of the members of the Delaware Paralyzed Veterans Association, Inc., I strongly urge your support to promote legislation correcting the adoption discrimination in the Social Security Administration's policy.

As we understand, the Subcommittee on Social Security of the House Committee on Ways and Means has scheduled a hearing on April 6th to discuss testimony regarding this proposed legislation to rectify this discrimination. We feel that the current policy of the Social Security Administration discriminates against adopted children of disabled persons, and this policy must be corrected.

We appreciate your anticipated support to remove this inequity.

Sincerely yours,

Lawrence T. Kenny, II
President, D-PVA

LTK:mf

STATEMENT OF MARILYN DURHAM

TO THE

SUBCOMMITTEE ON SOCIAL SECURITY

COMMITTEE ON WAYS AND MEANS

UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 6, 1989

Submitted by:

Alice Bussiere
Teresa Demchak
National Center for Youth Law
1663 Mission Street, 5th Floor
San Francisco, CA 94103
(415) 543-3307

Alan Lieberman
Legal Services of Northern California
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(916) 345-9491
Attorneys for Marilyn and Amalia Durham

Marilyn Durham is a divorced and disabled wage earner who has been receiving social security benefits since 1974. She also is the mother of an adopted Korean orphan, Amalia, who is now eleven years old. After being told that they could not have children of their own and deciding to adopt a child who might not otherwise have a home, Ms. Durham and her former husband adopted Amalia in 1978 when she was eleven months old. Amalia is now a naturalized citizen of the United States. When Amalia was two years old, Ms. Durham and her husband divorced. Initially, Ms. Durham attempted to support herself and her daughter on her disability benefits and the infrequent child support payments she received from her former husband. Later her former husband disappeared and the child support payments stopped altogether. A Social Security worker suggested Ms. Durham apply for benefits for Amalia. Ms. Durham did and, after initially being turned down, was awarded benefits for her daughter. Then she received a letter saying that Amalia was not entitled to benefits because she was adopted after Ms. Durham became disabled and, therefore, there was a presumption that Amalia had been adopted so that Ms. Durham could receive Social Security benefits for her.

Ms. Durham supports the passage of amendments to the Social Security Act that will ensure that adopted children will be treated the same as biological children of an insured wage earner. See Exhibit A, a letter sent by Ms. Durham to President Reagan.

The law now treats adopted children differently than biological children of a wage earner. Children born to a wage earner after she establishes eligibility for social security benefits are eligible for child insurance benefits, but children adopted after the wage earner becomes eligible for benefits may not receive child's insurance benefits unless they meet certain criteria. Children adopted more than one year after the wage earner became eligible for benefits are not eligible for child's insurance benefits at all.

The justification for the different treatment of adopted children is to protect against abuse through adoptions undertaken to obtain social security benefits. H. Rep. No. 231, 92d Cong. 1st Sess. (1971) reprinted in 1972 U.S. Code Cong. & Adm. News 4989, 5039 and S. Rep. No. 1230, 92d Cong. 2nd Sess., 140 (1972). This justification was not based on any evidence that social security recipients would in fact adopt children merely to get additional benefits, nor does such evidence exist. The Court of Appeals for the Second Circuit has said,

> We are unaware of any empirical data pertaining to the likelihood of improperly motivated adoptions. Nor does the history of §402(d)(8) indicate that Congress had any such data before it.

Claybourne v. Califano, 603 F. 2d 372, 379 (2d Cir. 1979).

Furthermore, it is highly unlikely that a wage earner could benefit financially by adopting a child. Adoption procedures are expensive, and children cost money to raise. Ms. Durham and her husband spent over $5000 to adopt Amalia, and child's insurance benefits for Amalia would amount to less than $300 a month - hardly the makings of a profit making enterprise. See Exhibit A.

Even if a prospective adoptive parent were motivated by greed, it is unlikely that he could succeed in obtaining an adoption decree. All states provide for detailed procedures, including investigation of the adoptive parents, before an adoption can take place. For example, California requires the state Department of Social Services or a licensed adoption agency to interview the prospective adoptive parents and all persons from whom consent is required, to investigate the proposed adoption, and to submit a full report to the court. Cal. Civ.

Code §§ 226.5 & 226.6. Included as Exhibit B is a letter from an Adoptions Supervisor for the California Department of Social Services which explains the California procedure and concludes that it would be highly unlikely that a family would be able to receive approval for an adoption if their primary motivation was to qualify for additional Social Security benefits. California law also requires the adoptive parents to appear before the court so that the court can determine whether the adoption is in the best interest of the child. Cal. Civ. Code § 227.

Although courts have deferred to Congressional authority and have failed to find the distinction between adopted children and biological to be illegal, they have expressed some concern about the different treatment of adopted children. In the case cited above, the Court of Appeals for the Second Circuit said,

> Some may consider it far fetched, particularly in view of the rigorous screening procedures in effect in most states before a child may be adopted, to believe that persons would assume the burdens of parenthood just to qualify a child for secondary Social Security benefits. But in the absence of any reason to think that Congress acted out of ill-will, we must accord it considerable leeway in enacting statutory classifications, and we cannot assume that it has acted unreasonably. Id.

A judge in the Court of Appeals for the Third Circuit went even further.

> It might be well, however, for Congress to reconsider whether the classification in question is not far broader and somewhat harsher than necessary to achieve the suggested purpose of protecting against sham adoptions aimed at gaining social welfare benefits. This seems to be particularly so in view of the carefully regulated nature of adoption procedures that now obtain in practically every state.

Brehm v. Harris, 619 F. 2d 1016, 1021 (Adams, J., Concurring) (3d Cir. 1980).

In addition, the different treatment of adopted children is at odds with current child welfare practice which seeks to promote adoption and to integrate adopted children into their families as much as possible. In the past, adopted children were often treated as second class citizens, see Unruh, Adoptee's Equal Protection Rights, 28 U.C.L.A. L. Rev. 1314 (1981), and, in fact, denial of social security benefits is viewed as evidence of a lingering discriminatory attitude. Id. at 1339. This treatment is clearly inconsistent with the modern trend to afford adopted children all of the same rights as biological children see e.g. Cal. Civ. Code § 228 and to promote adoption as a way of providing permanent homes for children who cannot or should not live with their parents, see e. g. The Adoption Assistance and Child Welfare Act, 42 U.S.C. § 670, et. seq..

CONCLUSION

Marilyn Durham loves her daughter as much as any mother can love a child. She is struggling to provide a good home for Amalia. If Amalia was Ms. Durham's natural daughter, she would be eligible for Social Security benefits, but because she is adopted she is not. This is neither a just nor a rational result. Ms. Durham urges passage of the proposed amendments.

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APR 04 1989

March 28, 1989

The Honorable Andy Jacobs, Chairman
House Subcommittee of Social Security
B-316 Rayburn House Office Building
Washington, D.C. 20515

In regards to the Social Security benefits concerning adopted children. Being a parent which has chosen to adopt a child through Division of Family Services, I would like to express my views on the fact adopted children not receiving benefits due to timing. Children which are adopted have given up many things due to circumstances beyond their control. And then our system cheats them one more time because of timing. And at the same time paying for stepchildren which the responsible party should be supporting. Then a family decides to adopt for various reasons and you say sorry the timing is wrong. None of us know the future. Many young military men have just recently been admitted to the V.A. Hospital in St. Louis, Missouri. This is a dreadful change for them. As the chance may arrive in the future for marriage most will have to adopt to experience the joy of parenthood. But in the case they have their Social Security already you will say to them sorry. I feel we neeed to treat all children fair adopted children have not chosen to be placed in services that find proper parents. Which thank God these laws exsist. But let us asAmericans in return give them every chance to the best future. I love the comerical, many adopted children have grown up to be important people. Our adopted daughter is always talking of working with our disabled veterans when she is grown. I find this to be a heart warming thing. My heart has been there too. Please reconsider your voting on these benefits. Timing is not the issue it is that children and our veterans have had a second chance. Everyone wants to have the basic normal life. So none of us know what the future holds. We would do many things differently. I love the fact we have an adopted child. THis has helped my husband more then any program. It was as if she needed as badly as her father needed to be needed. I feel if our young boys are proud to do for their country our country should be proud to do for them. WE do seem to help the enemies enough. Thank you for the chance to air about this issue.

Mr. William A. Jenkins
Mrs. Patricia A. Jenkins

I would like to express the pride we feel for our Congressman I feel we have the best. Congressman Bill Emerson

NEW YORK STATE CITIZENS' COALITION FOR CHILDREN, INC.

The New York State Citizens' Coalition for Children, Inc., is an organization of 82 adoptive and foster parent groups and concerned citizens in every region of New York State. Our purposes include adoption and foster care advocacy, community education, parent group development, family support services, and recruitment of families for children awaiting adoption. We are united in our belief that every child has the right to a permanent, loving family.

When we first learned of the denial of Social Security benefits to a New York family because their child was adopted after the parent went on disability, we were certain the denial was based on bureaucratic error. Surely there could be no rule which so clearly discriminates against adoptive families, or so we thought. Upon further inquiry and investigation, we learned no mistake had been made. According to the current rules, the family was properly denied. Further, the rule intended the discrimination; supporting statements at the time it was passed declared the rule would prevent families from adopting for the purpose of getting the disability benefits!

How could the payments possibly compensate for the demands and expenses of parenting a child? Even if a case could be made for that argument, why, then, are not biological children born after the disability disallowed? The same mind which imagined someone would adopt for monetary gains might also imagine that someone would give birth to a child for the same reason. Yet biological children born after a parent goes on disability are covered. Do United States of America policy makers actually believe and act upon a belief that adoptive parents as a class are more "unscrupulous" than biological parents?

We believe the rule is unfair and discriminatory. In every other aspect of law, an adopted child is equal to a biological child. The Social Security rule which denies benefits to a child adopted after his/her parent is deemed disabled creates a double standard and flies in the face of other law which has legitimized the adoptive relationship.

It is impossible for us to know how many adoptive families this ruling affects. We believe, however, that anything which negatively affects even one adoptive family, by virtue of the adoption status, negatively affects *every* adoptive family. Adoption is not second class parenting. Adoptive families must have the right to whatever benefits are allowed biological families.

Government should do everything possible to support all American families, no matter how they are constituted or how they come together. The Social Security rule, which instead discriminates against and negatively affects adoptive families, should not be tolerated.

Judith Ashton, Executive Director
New York State Citizens' Coalition
for Children
614 West State Street
Ithaca, New York 14850
(607) 272-0034

225

APR 03 1989

GREAT PLAINS CHAPTER
PARALYZED VETERANS OF AMERICA, INC.
7883 MAIN ST. RALSTON, NE 68127 (402) 331-3112
OWNERS OF LA BONNE VIE & PAPIO VALLEY ACCESSIBLE LIVING APARTMENTS

March 27, 1989

The Honorable Andy Jacobs, Chairman
House Subcommittee on Social Security
B-316 Rayburn House Office Building
Washington, D.C. 20515

Dear Sir,

In regards to dependent benefits to children adopted after an SSDI recipient becomes disabled.

In this day and age of the homeless and the hungry, I feel that for someone to adopt a child, take care of them and raise them, is beneficial to all parties concerned. After 19 years on Social Security Disability, I have been able to obtain a limited full time job, and while at the same time, my wife and I have adopted a daughter. We will not be receiving SSDI for this child, however, I know from experience that, the parent, the government, as well as adopted child all benefit, in an adoption of this type, in that someone is caring enough to spend their time and resources for the benefit of the needy child.

For those on SSDI, the financial strain, percentage wise, is greater than for the average citizen. However, their abilities to raise and care for an adopted child is potentially better than that of the average citizen. While at the same time their parenting time, "quality time," is increased because of their inability to work full time. This quality time allows them to spend more time with the child, whereas the average working parent has to drop them off at a day care center to go to work.

To sum it up, the SSDI recipient needs the dependent benefits to assist them in becoming the better parent that they are potentially capable of being.

I'm sure you realize that a child raised "in" a caring home has more potential of becoming an uprighteous citizen than one raised "out" on the street.

A PARAPLEGIC IS AN INDIVIDUAL
THE PARALYZED VETERANS OF AMERICA IS AN ORGANIZATION FORMED BY AND FOR THE MOST SERIOUSLY DISABLED IN THE WORLD. IT IS DEVOTING ITS LIFE AND EFFORT TO EVERY PROBLEM OF EACH PARAPLEGIC REGARDLESS OF RACE, CREED OR COLOR. THESE PROBLEMS ARE MANY. FOR A PARAPLEGIC HAS SUFFERED A SPINAL CORD INJURY RESULTING IN PARALYSIS. (1) INABILITY TO WALK. (2) LOSS OF CONTROL OVER INTERNAL FUNCTIONS. (3) LOSS OF SENSATION BELOW LEVEL OF INJURY. (4) PERMANENT CONFINEMENT TO A WHEELCHAIR.

Page 2...dependent children

Your votes in favor of SS benefits to children adopted after an SSDI recipient becomes disabled is one positive step towards a family oriented society.

We appreciate your support.

Roger Lainson by mc

Roger Lainson
Executive Director

RL/mc

OPENING STATEMENT OF THE HONORABLE DICK SCHULZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I appreciate your scheduling this hearing on social security children's benefits. It is appropriate that periodically we fine tune eligibility criteria, and it has been many years since we last examined the eligibility criteria established for children.

I am pleased that we are about to consider the Administration's proposal to liberalize the criteria for adopted children. As I'm sure most of you know, this is an outgrowth of former President Reagan's White House Task Force on Adoption. I know our colleague Bob McEwen has been in the forefront on this issue and I look forward to his testimony.

Current restrictions tend to discourage some adoptions after a worker's entitlement. Those restrictions were enacted in the early 60's in response to reported abuses, particularly in foreign adoptions. Some few workers retired to their native country and introduced their own "mini-Marshall Plan", adopting the village children. Intervening statutory changes protect the trust funds from such abuse, even if the criteria should be liberalized.

Clearly, there is a domestic need to encourage adoptions, particularly for older children in foster care, or for handicapped children. Those who are willing to meet this need should not be discouraged.

Most adopting parents are committed to costs which exceed any potential benefits. Indeed, adoption represents such an enormous responsibility that it is doubtful benefits alone would act as a motivation. In any event, costs are comparatively modest, $80 million over five years, in part because family benefits are capped.

Mr. Chairman, I also look forward to hearing our witnesses comment on your bill, H.R. 789. I empathize with your intent to assure that the worker actually has supported a stepchild for that child to have a right to share benefits equally with any natural children the worker may have. On the other hand, a one-half support test is a very stringent test, one that could inadvertently discriminate against working women. In many instances in intact families, the woman earns less than the man making it more likely that a child could qualify on the stepfather than the stepmother.

Perhaps a lesser standard of support might meet your concerns, Mr. Chairman?

I want to thank our witnesses for taking time to testify today. If there are other aspects of children's entitlement which are of concern, this is an appropriate time to describe them.

WISCONSIN PARALYZED VETERANS OF AMERICA
2401 N. Mayfair Rd. Suite 20 Milwaukee, WI 53226 414 475-7792

March 28, 1989

The Honorable Andy Jacobs
Chairman, House Subcommittee on
Social Security
B-316 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Jacobs:

I understand that your committee will be receiving testimony on April 6, 1989 concerning legislation to correct the Social Security Administration's policy which denies dependent benefits to children adopted after an SSDI recipient becomes disabled.

The Wisconsin Paralyzed Veterans of America (WPVA) serves not only our membership, but advocates for the disabled community in general. I cannot stress too heavily the importance of this proposed legislation as it would remove the current inequity and allow an adopted child to be treated the same as a natural born child. This is an important, much needed, and long overdue change.

I urge you and your fellow representatives to take quick action on this measure. Your support would be greatly appreciated.

Sincerely,

Richard D. Reimer
Executive Director,
Wisconsin PVA

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2401 N. Mayfair Rd. Suite 20 Milwaukee, WI 53226 414 475-7792

March 28, 1989

The Honorable Andy Jacobs
Chairman, House Subcommittee
on Social Security
B-316 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Jacobs:

It has just come to my attention that your subcommittee will shortly be receiving testimony on legislation to correct the Social Security Administrations (SSA) policy which denies dependent benefits to children adopted after SSDI recipient becomes disabled.

I hope you adopt this measure as quickly as possible. The proposed legislation would allow an adopted child to be treated the same as a natural born one. That is only fair. Those of us who are disabled face many challenges every day. These range from inaccessible housing to un-ramped buildings. Many of us would lose all health care benefits if we work full-time. Please, remove one of our challenges by allowing us to treat all our children as equals.

Thank you for your time.

Sincerely,

Gus Sorenson
Vice-President,
Wisconsin PVA

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